

William Ellis,

VS.

Detective Jeffrey Yasenchack, et al.,

In the United States District Court
For the Northern District of Ohio
Eastern Division
Case No. 1:22-cv-00815

Jeffrey Yasenchack

Friday, July 14, 2023

Reporter Denise Cardona



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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4

5 WILLIAM ELLIS,)

6)

7 Plaintiff,)

8)

JUDGE SOLOMON OLIVER, JR.

9 -vs-

)

CASE NO. 1:22-CV-00815

10)

11 DET. JEFFREY YASENCHACK,)

12 Et al.,)

13)

14 Defendants.)

15)

16 - - - -

17 Deposition of JEFFREY YASENCHACK, taken as if upon

18 examination before Denise Cardona, a Notary Public

19 within and for the State of Ohio, at the offices of

20 Friedman, Gilbert, & Gerhardstein located at 50 Public

21 Square, Suite 1900, Cleveland, Ohio, at 10:00 a.m., on

22 Friday, July 14, 2023, pursuant to notice and/or

23 stipulations of counsel.

24 - - - -

1 APPEARANCES:

2 On behalf of the Plaintiff

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1 P-R-O-C-E-E-D-I-N-G-S

2 - - -

3 Jeffrey Yasenchack, of lawful age, being first
4 duly sworn, testified upon his oath as follows:

5 EXAMINATION OF JEFFREY YASENCHACK

6 BY MR. SCOTT:

7 Q. Please let the record reflect that we are here
8 today for the deposition of Jeffrey Yasenchack, being
9 taken in the matter of William Ellis, versus Detective
10 Yasenchack, et al. This case pending in the United
11 States District Court, For the Northern District of
12 Ohio, before the Honorable Judge Solomon Oliver, Jr.

13 Mr. Yasenchack, my name is Joseph Scott. And
14 we've asked you to come here today to ask you a number
15 of questions relative to the complaint that has been
16 filed and the allegations asserted in that complaint.

17 You understand that, correct?

18 A. I do.

19 Q. Have you ever had your deposition taken in a
20 civil matter before?

21 A. I think I had one years ago on an accident.

22 Q. Okay.

23 A. A traffic accident.

24 Q. Let me just say a couple of things. And I
25 appreciate that some of the questions today may test

1 your memory a little bit, and if you don't recall,
2 that's certainly appropriate, just tell me you don't
3 recall and we'll move on.

4 I'm going to be asking you questions, of course.
5 And if there's anything that I ask that isn't clear to
6 you, please tell me and I'll try to rephrase my
7 question. Otherwise, I'm going to assume that you are
8 going to answer my questions to the best of your
9 ability; is that fair?

10 A. Yes.

11 Q. Okay. If at any time you want to stop, take a
12 break, I appreciate it's a little stuffy in here, just
13 tell me and we will take a break. I only ask that you
14 answer whatever question is pending before we break; is
15 that okay?

16 A. Yes.

17 Q. Would you please state your full name for the
18 record.

19 A. Jeffrey Yasenchack.

20 Q. And my understanding is you are now retired from
21 the City of Cleveland Police Department; is that
22 correct?

23 A. I am.

24 Q. And are you currently employed or just enjoying
25 retirement?

1 A. Enjoying retirement.

2 Q. Very good. Fair enough.

3 And when you retired Friday the City of
4 Cleveland, your last duty assignment would have been as
5 Detective; is that correct?

6 A. Correct.

7 Q. With what unit?

8 A. The Fifth District Vice Unit.

9 Q. How long had you been in the Fifth District Vice
10 Unit?

11 A. Probably close to seven or eight years.

12 Q. Okay. All right. Were you eligible for the drop
13 program --

14 A. Yes.

15 Q. -- when you retired?

16 You just elected not to participate in that?

17 A. Correct.

18 Q. Okay. All right. We're obviously here to talk
19 about the investigation, subsequent criminal cases
20 involving William Ellis. And you were at least one of
21 the detectives involved in at least two investigations
22 of Mr. Ellis; is that fair?

23 A. Yes.

24 Q. The first investigation would have been on or
25 about March 4th of 2019; is that correct?

1 A. Correct.

2 Q. And that arose out of a traffic stop that you
3 initiated on Mr. Ellis, while driving his vehicle?

4 A. Correct.

5 Q. Okay. And the second investigation would have
6 been related to a search warrant affidavit that was
7 executed on or about May 14, 2020; does that sound about
8 right?

9 A. Sounds about right.

10 Q. Okay. Let's just get to that. I'm going to mark
11 this.

12 - - - -

13 (Thereupon, Plaintiff's Exhibit 1 was marked
14 for purposes of identification.)

15 - - - -

16 Q. Mr. Yasenchack, I'm going to hand you what we're
17 going to mark, for the purposes of this deposition, as
18 Plaintiff's Exhibit 1.

19 And if you could please take a few minutes and
20 look that over. We'll be going through this off and on
21 today.

22 Okay? And first of all, what I've handed you,
23 marked as Plaintiff's Exhibit 1, do you recognize that
24 as a copy of an affidavit for a search warrant that you
25 executed on or about May 14th of 2020?

1 A. Yes.

2 Q. Okay. And prior to executing this search
3 warrant, am I correct that you had been involved in an
4 earlier investigation and subsequent criminal
5 prosecution of Mr. Ellis in the Cuyahoga County Court of
6 Common Pleas; is that correct?

7 A. Yes.

8 Q. Okay. And that was, again, the 2019 case that
9 followed the traffic stop that you initiated on March
10 4th of 2019; is that correct?

11 A. Yes.

12 Q. Okay. And am I correct that the 2019 case
13 involved an suppression hearing concerning evidence that
14 was collected during the March 4, 2019 traffic stop?

15 MR. RUSSELL: Objection.

16 Go ahead.

17 Q. Do you recall that?

18 A. Yeah. That case ended up being -- having a
19 suppression hearing.

20 Q. Okay. And did you testify at the expression
21 hearing?

22 A. I did.

23 Q. Okay. You would agree with me that the Court
24 ultimately suppressed all of the evidence that was
25 collected on March 4, 2019, correct?

1 A. Yes.

2 Q. And part of the basis for the Court's suppression
3 was the Court's conclusion following the hearing that
4 you were not credible?

5 MR. RUSSELL: Objection.

6 Go ahead.

7 Q. Is that your recollection?

8 A. Yes.

9 Q. Okay. Now how would that typically work? How
10 would you typically work with the prosecutor's office
11 when there was a criminal case pending, where you were
12 one of the detectives involved? Would you meet with
13 them regularly? How did that work, in general?

14 A. Yeah. We would -- you would meet with the
15 prosecutor.

16 Q. Okay.

17 A. Just go over.

18 Q. Were those -- I guess I'm just trying to figure
19 out how that worked.

20 You know, was it formal? Would they reach out to
21 you and schedule a meeting? Or would you just simply
22 drop into their offices? How did that work?

23 A. You know, sometimes they sent out a subpoena to
24 meet at their office to discuss the case. Or sometimes
25 they would just call you up to request you to come.

1 Q. All right. And did you have a fairly close
2 working relationship with the folks in the prosecutor's
3 office?

4 A. Yeah. Some of the prosecutors, yes.

5 Q. What about the prosecutors that were involved in
6 the 2019 criminal prosecution to Mr. Ellis, were those
7 folks that you had worked with before?

8 A. A prosecutor I worked with a couple of times.

9 Q. Are these people that you would recognize and see
10 them if you saw them out and about?

11 A. Yes.

12 Q. Okay. And do you recall, as regards to 2019
13 criminal case, how you came to first contact the
14 prosecutor's office with the initial case information?

15 A. You mean, like, got the case started?

16 Q. Correct.

17 A. Like, how we initiated the case?

18 Q. Yes, sir.

19 A. We fill out a, like, a case packet. And it just
20 goes eventually to the prosecutor's office.

21 Q. Okay. Just through some inner office mail? You
22 don't take it over, it gets dropped off?

23 A. Yes.

24 Q. Okay. And then after they review it, do they --
25 would they have reached out to you to follow up on the

1 **information in the initial case packet?**

2 A. From that point, it would be scheduled for a
3 Grand Jury.

4 **Q. Okay. So you would be notified that there would**
5 **be a Grand Jury proceeding involving your investigation?**

6 A. Yes.

7 **Q. Okay. And do you recall if you testified before**
8 **the Grand Jury in the state court proceeding?**

9 A. I'm pretty sure. You know, sometimes other
10 detectives will fill in if you're absent that day.

11 But, you know, I don't remember testifying in the
12 Grand Jury for this. But it just could be just, like,
13 don't recall.

14 **Q. And that's fair. I appreciate that.**

15 **So after the case gets going, at some point were**
16 **you notified by the prosecutor's office that there's**
17 **going to be a hearing on the defense's motion to**
18 **suppress the evidence?**

19 A. Yes.

20 **Q. And would there have been some sort of prep**
21 **session between you and the prosecutors to prepare for**
22 **that suppression hearing?**

23 A. Yes.

24 **Q. Do you recall any of that?**

25 A. I do.

1 Q. All right. And was that something where somebody
2 would have called you from the prosecutor's office or
3 sent you an e-mail or something, requesting that you
4 come in for the session?

5 A. Like I said earlier, they may have sent me a
6 subpoena or called us directly.

7 Q. Okay. You're not sure which way it occurred?

8 A. No.

9 Q. Okay. But you do recall there was some sort of
10 meeting?

11 A. Yes.

12 Q. And then you, of course, attend the suppression
13 hearing itself?

14 A. I did.

15 - - - -

16 (Thereupon, Plaintiff's Exhibit 2 was marked
17 for purposes of identification.)

18 - - - -

19 Q. Mr. Yasenchack, handing you what's been marked as
20 Plaintiff's Exhibit 2, I will represent to you is a copy
21 of the docket from the state court proceeding,
22 captioned, State of Ohio, versus William Ellis. This is
23 the 2019 case.

24 I believe I'm correct that the suppression
25 hearing was held some time in 2019.

1 **Do you recall that?**

2 A. I don't recall that date but it does show it as
3 August 23rd, I think.

4 **Q. Okay. And do you recall in that case that the**
5 **state court judge ultimately determined that the**
6 **evidence that had been collected from Mr. Ellis during**
7 **the March 4, 2019 stop should be suppressed?**

8 A. Do I remember that or?

9 **Q. Do you recall that?**

10 A. Yeah. That was the ultimate decision.

11 **Q. And was that around September of 2019?**

12 A. That, I don't know.

13 **Q. I'm sorry, August 23, 2019?**

14 A. That's when it was sent, the suppression.

15 **Q. Well, am I correct that if you turn to the third**
16 **page of Plaintiff's Exhibit 2, by the 8/23/19 docket**
17 **entry, the Court indicated, "Defendant's Motion to**
18 **Suppress, filed on 5/16/2019 is granted."**

19 **Do you see that?**

20 A. Yep.

21 **Q. I guess what I'm -- what I'd ask you is, were you**
22 **notified by the prosecutor's office around that time**
23 **that that had been the Court's ruling, was to suppress**
24 **that evidence?**

25 A. No.

1 Q. All right. Do you recall being informed at any
2 time that the State Court ruling was to suppress that
3 evidence?

4 A. I don't remember any notification.

5 Q. Okay. Well would the prosecutor's office
6 typically keep you apprised of developments of criminal
7 cases where you were one of the detectives involved?

8 A. Sometimes.

9 Q. Okay. Did you come to learn at any time that the
10 prosecutor's office was trying to appeal that decision?

11 A. Yes.

12 Q. When did you become aware of that?

13 A. I don't know what date.

14 Q. Okay. Would it have been in 2019 some time, to
15 the best of your recollection?

16 A. No.

17 Q. No it would not have been or --

18 A. It would not have been in 2019.

19 Q. It would have been in 2020 some time?

20 A. I don't remember the date that --

21 Q. Okay.

22 A. -- I eventually learned, but...

23 Q. Let me ask you this: Would you have had a system
24 of some sort, for your own benefit, of keeping track of
25 active criminal prosecutions where you may have been a

1 **witness?**

2 A. Just the county website.

3 Q. Okay. So let me understand what you mean by
4 that. Would you go to the county court docket from time
5 to time and check on criminal prosecutions that you knew
6 you were involved in?

7 A. Yes.

8 Q. And what sort of system or practice did you have
9 in place for monitoring those cases?

10 A. You know, if I remembered that a case was coming
11 up and I needed to see that the date as to a sentencing
12 or motion to suppress, I would check it.

13 Q. Let me ask you this: How many cases, active
14 criminal prosecutions, would you typically be involved
15 in at any given time?

16 A. Numerous.

17 Q. Okay.

18 A. We were constantly getting complaints.

19 Q. Okay.

20 A. We have cases that are going through the court
21 system and then cases that we're actively investigating
22 before arrest.

23 Q. Do you think at any give time during your time,
24 and let's talk about this time, around 2019, that you
25 would have had more than a dozen criminal prosecutions

1 **going on at a given time?**

2 A. Yes.

3 **Q. So would those have all been in state court?**

4 A. Yeah. Only a handful of cases during this time
5 period would -- were prosecuted through the federal
6 system.

7 **Q. Okay. And let me ask you this: Other than**
8 **Cuyahoga County and the Federal District For the**
9 **Northern District of Ohio, do you recall ever being**
10 **involved in any criminal prosecutions outside those two**
11 **venues, like, for instance, Summit County, Lake County,**
12 **Lorain County?**

13 A. I think we assisted Lake County Narcotics on a
14 case.

15 **Q. Okay.**

16 A. Or a few cases, yeah.

17 **Q. In that situation, you might have been part of a**
18 **multiple jurisdictional task force or something involved**
19 **in the criminal prosecution?**

20 A. No. I don't think we were involved in the task
21 force. We were just -- since our district borders, you
22 know, Euclid and then Lake County, we would help Lake
23 County Narcotics during some of their investigations.

24 **Q. Okay. To the best of your recollection, in those**
25 **cases where you may have assisted Lake County or some**

1 other jurisdiction, would you have been considered a
2 lead detective on that case?

3 A. No.

4 Q. Okay. And in those situations where you may have
5 assisted another jurisdiction, such as Lake County,
6 would you have been the officer to have brought the case
7 to the local prosecutor?

8 A. No.

9 Q. You believe it was then some time in 2020 when
10 you learned that the Court had ordered suppression of
11 the evidence seized from Mr. Ellis during the
12 March 4, 2019 traffic stop?

13 A. The question is when I learned that the evidence
14 was suppressed?

15 Q. Yes, sir.

16 A. I don't remember a date on that.

17 Q. Okay. Do you remember how you came to learn
18 that?

19 A. I don't remember if it was the prosecutor that
20 called, or I looked on the website, but -- I don't
21 remember.

22 Q. Okay. All right. So it could have been either
23 one of those things, you could have been informed
24 directly by the prosecutor's office, or you may have
25 seen it in the course of going through active case

1 dockets that you may have been involved with; is that
2 fair?

3 A. Yes.

4 Q. Okay. And did you come to learn that the State
5 was actually going to move to dismiss the charges
6 against Mr. Ellis in the State Court proceeding?

7 A. When did I learn, or whether --

8 Q. Did you come to learn that?

9 A. Probably just from seeing it on the website.

10 Q. Okay. All right. So you'll see on Plaintiff's
11 **Exhibit 2**, there's an entry on the docket for
12 May 14, 2020, concerning the State's Motion to Dismiss
13 the indictment as being granted.

14 Do you see that?

15 A. Yes.

16 Q. And the State had, in fact, filed a motion to
17 dismiss the indictment the day before, on May 13, 2020?

18 A. Yeah. That's what it says right there.

19 Q. And you don't recall whether or not you saw
20 either one of those entries or exactly when you saw
21 either one of those entries; is that fair?

22 A. That's fair.

23 Q. Okay. And you are not sure how you came to be
24 informed about either one of those actions by the
25 prosecutor's office or the Court?

1 A. Correct.

2 Q. Okay. Now if we could go back to the Plaintiff's
3 **Exhibit 1**, which is the Search Warrant Affidavit.

4 Am I correct, sir, that you began preparing this
5 on a date earlier than May 14, 2020?

6 A. Did I actually start writing this?

7 Q. Yes, sir.

8 A. Before May, no.

9 Q. Before May 14th?

10 A. No.

11 Q. Okay. Do you recall presenting a draft of this
12 Search Warrant Affidavit to one of the city prosecutors
13 prior to May 14th of 2020?

14 A. Going back one question, I did draft this before
15 May 14th.

16 Q. Okay. Do you recall when?

17 A. No. But shortly before that date.

18 Q. Could it have been a couple days before?

19 A. Yeah. I don't know. I don't remember.

20 Q. Do you recall having one of the city prosecutors
21 review the Search Warrant Affidavit prior to
22 May 14, 2020?

23 A. Yes.

24 Q. Was that Gina Villa[spelling]?

25 A. I don't remember who.

1 Q. Okay. Now this Search Warrant Affidavit,
2 Plaintiff's Exhibit 1, am I correct, is the product of a
3 subsequent investigation that you conducted relative to
4 Mr. Ellis?

5 And by subsequent, I mean subsequent to the
6 March 4, 2019 traffic stop; is that fair?

7 A. Yes.

8 Q. Okay. And do you recall how you were assigned to
9 perform that particular investigation that was used to
10 support this search warrant?

11 A. Whether I was assigned to it or -- what do you
12 mean by that?

13 Q. Let me ask it this way: How did you become
14 tasked or responsible for a particular criminal
15 investigation?

16 A. There's quite a few avenues as to how we generate
17 cases.

18 Q. Okay.

19 A. And this case, I had received information about
20 someone selling drugs on that street.

21 Q. Well, yeah. Let's explore that a little bit and
22 go through this.

23 The first contact you had with Mr. Ellis, back in
24 March of 2019, was a result of a traffic stop, correct?

25 A. Yes.

1 Q. And were you, as you recall, were you just
2 patrolling the area where that traffic stop occurred or
3 were you conducting an investigation into potential
4 criminal activity?

5 A. I believe that there was complaints about drug
6 activity in the East 200 area, up near the highway.

7 Q. Okay. And, again, was that complaint brought to
8 you directly or did somebody inform you within the
9 department that "we have this complaint and need you to
10 go and investigate"?

11 A. I don't remember how I got that complaint. You
12 know, it could have been someone calling the office,
13 someone calling the Commander's office. Could have been
14 someone coming to the lobby and giving information.
15 There's quite a few ways that we receive complaints.

16 Q. Okay. And I guess I'm just trying to understand
17 that a little bit. If somebody would call in or walk
18 into the Fifth District and complain about criminal
19 activity in a particular area, and then would you be the
20 one that takes the complaint or would somebody else take
21 it and apprise you of it? How does that work?

22 A. Probably one of the lobby office workers take
23 that information and then convey it to the Vice Unit.

24 Q. Is that put on a form of some kind?

25 A. Normally, it's just sheet of paper that that

1 person writes on.

2 Q. Is it maintained in a file somewhere?

3 A. No.

4 Q. Or once it's handed off to you, nobody keeps it?

5 A. Yeah.

6 Q. Okay. And is it just based upon the availability
7 of detectives who picks up on that complaint and goes
8 out to investigate?

9 A. Yes.

10 Q. So it's not necessarily a lieutenant or a
11 supervising officer that is saying, "I want you to go
12 out and perform this investigation"; is that fair?

13 A. Yes.

14 Q. Okay. So that's one of the ways.

15 And then with regards to the investigation that
16 was conducted relative to the May 14, 2020 search
17 warrant, you indicated that you had received some
18 information; is that right?

19 A. I did.

20 Q. Do you remember how you received that
21 information?

22 A. I made a traffic stop. And I received some
23 information from the person I conducted the traffic stop
24 on.

25 Q. Okay. And do you recall when that was?

1 A. Just in April of 2020.

2 Q. Okay. And do you recall who was involved in the
3 traffic stop?

4 A. I do.

5 Q. Who was that?

6 A. Victor Payne.

7 Q. Victor Payne?

8 A. P-A-Y-N-E.

9 Q. Okay. Did Mr. Payne receive some sort of traffic
10 citation?

11 A. No.

12 Q. Do you remember anything about the stop?

13 A. I do.

14 Q. What do you recall?

15 A. I conducted a traffic stop when he was driving a
16 motorcycle.

17 Q. Okay.

18 A. He pulled into a driveway off of 127th.

19 Q. Okay.

20 A. I mentioned the possibility of, if he gave me
21 information about the neighborhood, he wouldn't get a
22 traffic violation, a traffic ticket.

23 Q. Okay. So you told him, "In exchange for
24 information about the neighborhood, I won't write you a
25 ticket," something like that?

1 A. Something like that.

2 Q. Okay. And he gave you information?

3 A. He did.

4 Q. And what information do you recall him giving
5 you?

6 A. He pointed out -- discretely signaled the street,
7 a house across the street that he noticed a large volume
8 of white, Caucasian people were going to, staying a
9 short period of time and leaving.

10 Q. And would it be fair to say that the house that
11 he pointed out was ultimately determined to be the
12 residence of William Ellis?

13 A. Yes.

14 Q. Okay. And was there any sort of report that was
15 made that went along with this traffic stop?

16 A. No.

17 Q. Okay. It's my understanding that you were
18 wearing a wearable body camera system.

19 A. I was.

20 Q. Okay. And that the camera captured the first
21 part of the conversation; is that correct?

22 A. Correct.

23 Q. But did not capture the part of the conversation
24 regarding Mr. Payne identifying Mr. Ellis's residence as
25 a location where there was a lot of folks coming and

1 going; is that fair?

2 A. That is correct.

3 Q. Okay. Was that intentionally not captured?

4 A. Yes.

5 Q. So you would have turned the camera off?

6 A. I did.

7 Q. Okay. Now this interaction with Mr. Payne
8 occurred in mid April of 2020; is that fair?

9 A. Yes.

10 Q. Okay. And the activity that the investigation,
11 if you will, that forms the basis for the Plaintiff's
12 Exhibit 1, the Search Warrant Affidavit doesn't occur
13 until on or about May 11th of 2020, correct?

14 A. Can you just say that question again?

15 Q. Yeah. The investigation that you subsequently
16 conducted that formed the basis for your Search Warrant
17 Affidavit, that investigation activity does not take
18 place until approximately May 11th of 2020; is that
19 correct?

20 MR. RUSSELL: Objection.

21 Q. If you recall.

22 A. So you.

23 Re -- I don't understand the question.

24 Q. I'm just trying to ask you, you know, there was a
25 time period between this traffic stop involving

1 **Mr. Payne and when you had went back out to investigate**
2 **Mr. Ellis's residence on 127th Street, right?**

3 A. The -- this investigation started when I got the
4 information from Mr. Payne.

5 Q. Oh, okay. All right. What do you recall doing
6 after you got the information from Mr. Payne?

7 A. I think I drove by the house a few times, trying
8 to get license plate numbers.

9 Q. Okay. And do you recall when you did that?

10 A. No.

11 Q. Would there be some record of when you did that?

12 A. No.

13 Q. Okay. And do you recall if you were successful
14 in capturing any license plate numbers when you drove
15 past his house?

16 A. I don't remember.

17 Q. Okay. Do you recall if you gathered any other
18 significant information when you drove by Mr. Ellis's
19 house on those occasions?

20 A. You know, had I got any worthwhile information, I
21 would have included that in the affidavit.

22 Q. Okay. All right. Well, let's move on to that.
23 That helps.

24 Again, we've established that Plaintiff's Exhibit
25 1 is the Search Warrant Affidavit that you signed on or

1 **about May 14, 2020, correct?**

2 A. Correct.

3 **Q. And you prepared this in anticipation of meeting**
4 **with one of the Cuyahoga County Common Pleas judges to**
5 **obtain a search warrant for Mr. Ellis's home, correct?**

6 A. Once I drafted this, I took it to a county judge,
7 yes.

8 **Q. Okay. And that was the purpose for drafting the**
9 **search warrant, right -- or affidavit, was to ultimately**
10 **ask for a search warrant, correct?**

11 A. Yes.

12 **Q. And in preparing this, you would have detailed**
13 **the entirety of the investigation up to that point in**
14 **time, correct?**

15 A. I would have put pertinent information in the
16 affidavit.

17 **Q. Okay. And any material information, any**
18 **important information that your investigation had**
19 **gathered would have gone into this Search Warrant**
20 **Affidavit, correct?**

21 A. Information that I thought -- well, that proved
22 valuable, I would include in the affidavit.

23 **Q. Okay. Because you understood -- look, when you**
24 **wrote this affidavit, you had been on the force for,**
25 **what, 22 years?**

1 A. I would have to calculate that out.

2 Q. But you'd been on the force for quite a few
3 years, right?

4 A. Yes.

5 Q. And you'd been a detective for a number of years,
6 correct?

7 A. Yes.

8 Q. And this wasn't the first time that you prepared
9 a Search Warrant Affidavit?

10 A. No.

11 Q. Okay. And you understood that whatever judicial
12 officer was reviewing this information would be relying
13 upon this to determine whether or not there was probable
14 cause to issue a search warrant, correct?

15 A. Correct.

16 Q. All right. So you would want to put in there
17 anything that you thought might be of a value in helping
18 the court officer to determine whether or not probable
19 cause existed, right?

20 A. Yes.

21 Q. Okay. Now ultimately met with Cuyahoga County
22 Common Pleas Judge Brian McCormick, right?

23 A. Yes.

24 Q. And you met with him on May 14th of 2020?

25 A. Correct.

1 Q. You recall that?

2 A. No. I don't recall.

3 - - - -

4 (Thereupon, Plaintiff's Exhibit 3 was marked
5 for purposes of identification.)

6 - - - -

7 A. That's the date he signed it.

8 Q. Mr. Yasenchack, handing you what's marked as
9 Plaintiff's Exhibit 3 is Duty Report, dated 5/14/2020.

10 And the first line at 0900 hours, JC -- which I
11 assume stands for Justice Center?

12 A. Yes.

13 Q. -- Case Investigation SW signed by -- is that
14 search warrant?

15 A. Correct.

16 Q. -- signed by Judge McCormick, right?

17 A. Correct.

18 Q. And does that refresh your recollection that you,
19 in fact, met with Judge McCormick on May 14, 2020, to
20 get that search warrant signed?

21 A. Yes.

22 Q. Okay. And that's also the same day that the
23 Cuyahoga County Court of Common Pleas dismissed the
24 criminal charges against Mr. Ellis, relative to the 2019
25 case, correct?

1 A. I was unaware of that at that time.

2 Q. Okay. So that's just coincidental, as far as you
3 know, that those two things happened on the same day?

4 A. I had no knowledge of the suppression decision
5 had occurred at this time, on that date.

6 Q. Okay. How often would you check the criminal
7 dockets for the cases you were involved in while those
8 cases were pending?

9 A. I -- it varied.

10 Q. You don't recall checking the criminal docket in
11 2019 case of Mr. Ellis at any time between August 2019
12 and May of 2020?

13 A. No.

14 Q. Kind of a long period of time for a criminal
15 case, isn't it?

16 A. From what date?

17 Q. August 23rd of 2019 until May 14th of 2020?

18 A. So the question is, had I checked the county site
19 in between that time.

20 Q. Concerning that specific case, yes, sir.

21 A. I probably checked. But not before I had this
22 search warrant issued.

23 Q. Well, let me understand that. You are saying
24 that you probably checked during that nine-month period?

25 A. On this date, when I had this signed, the last

1 knowledge I had was that the State was appealing.

2 Q. Okay. Let me understand that. When you had this
3 search warrant signed on May 14th of 2020, you were
4 aware that the State was appealing an order of the
5 Common Pleas Court concerning the suppression of
6 evidence?

7 A. Correct.

8 Q. So you would have been aware, one, that the
9 evidence had, in fact, been suppressed by the State
10 Court judge, correct?

11 A. Yes.

12 Q. And two, that the prosecutor's office had
13 attempted to take a appeal of that issue to the 8th
14 District Court of Appeals; is that fair?

15 A. I knew that the event was suppressed and the
16 State was planning to appeal.

17 Q. Okay. And well, in fact, had you come to learn
18 now that the State did not file a timely appeal of the
19 suppression ruling?

20 A. I know that.

21 Q. In fact, they only had seven days from the date
22 of the ruling to appeal to the 8th District Court of
23 Appeals.

24 Do you understand that?

25 A. That's probably why we are here today.

1 Q. Okay. And the 8th District Court of Appeals
2 dismissed the appeal for lack of jurisdiction, on or
3 about April 20th of 2020; did you learn that?

4 A. That was due to the prosecutor not getting it in,
5 in time.

6 Q. Yes. I agree.

7 A. I'm aware of that now.

8 Q. But you don't believe you were aware of that on
9 May 14, 2020?

10 A. I know I wasn't.

11 MR. RUSSELL: Objection.

12 Q. All right. Did anybody else, other than
13 yourself, participate in the meeting with Judge
14 McCormick on May 14, 2020?

15 A. No.

16 Q. Was that typical that you would go meet with the
17 judge by yourself?

18 A. Yes.

19 Q. And meet in his chambers?

20 A. Yes.

21 Q. And did you provide the judge with any other
22 information, other than what was contained in the Search
23 Warrant Affidavit?

24 A. Normally, I would just provide him with the
25 affidavit.

1 **Q. Okay. So had you sought search warrants**
2 **previously from Judge McCormick?**

3 A. You know what? I'm not sure.

4 **Q. Okay. All right. That's fair.**

5 I guess what I'm trying to find out is, is there
6 sort of a routine practice of how this operated with the
7 Common Pleas judges? Would you kind of go in and say,
8 "Judge, we're here for a warrant. And here's my
9 affidavit."

10 Or did they kind of know why you were there?

11 A. Yeah. You would advise the bailiff as to the
12 reason why you were there.

13 **Q. Okay?**

14 A. And they would accommodate you to see the judge.

15 **Q. Okay.**

16 A. But normally, I would go, I think it's to the
17 16th or 17th floor, where Judge Sheehan and Judge
18 Corrigan, that was usually my go-to floor. They were
19 the most available, usually.

20 **Q. Okay. All right. I think Judge Sheehan was the**
21 **Administrative Judge for a long time. I don't know if**
22 **he still is, right?**

23 A. That was just recent, in the last couple of
24 years.

25 **Q. Okay. All right. I want to ask you about some**

1 specific parts of the Search Warrant Affidavit.

2 So you begin with, on the first page, I believe,
3 toward the bottom of the first page, the last few lines.
4 You write, "Affiant has participated with other members
5 of his unit in an ongoing investigation into the drug
6 trafficking operations described below; Affiant has not
7 always personally observed everything described below,
8 but that he did not personally observe was described to
9 him by other investigating officers who did."

10 Do you see that?

11 A. Yes.

12 Q. What other investigating officers did you
13 participate with at this time, May 14, 2020, concerning
14 this investigation?

15 A. I do not recall if anyone assisted me on doing
16 surveillance or checking the house for plates or
17 anything.

18 I may have asked somebody to, you know, check the
19 house for license plate numbers. I don't recall.

20 Q. Okay. So as you sit here today, you don't recall
21 if there were actually any other law enforcement
22 personnel who participated in this particular
23 investigation, correct? At least not as of the date of
24 this affidavit?

25 A. I don't remember if I had people assist me or

1 not.

2 Q. Okay. That's fine. Now on the next page, the
3 location given is 638 East 127 Street in the City of
4 Cleveland, Cuyahoga County, Ohio, correct?

5 A. Yes.

6 Q. And I think we established that that was
7 ultimately determined to be the residence of William
8 Ellis, correct?

9 A. Correct.

10 Q. If we turn now to the third page of the Search
11 Warrant Affidavit, in the first numbered paragraph,
12 paragraph 1, you state, "Affiant avers that in mid
13 April 2020 he received information from a concerned
14 citizen about a black male residing at 638 East 127th
15 Street selling drugs out of his house."

16 Do you see that?

17 A. I do.

18 Q. And I think we've already established that the
19 concerned citizen was, in fact, somebody that you had
20 stopped during a traffic stop, correct?

21 A. Yes.

22 Q. Victor Payne. And you had told Mr. Payne that he
23 would not get a traffic citation if he had told you
24 about criminal activity in the neighborhood; is that
25 fair?

1 MR. RUSSELL: Objection.

2 A. I had advised Mr. Payne if he supplied me
3 information, I wouldn't write him a traffic ticket.

4 Q. Well, the information you were looking for was on
5 possibly criminal activity, correct?

6 A. Yes.

7 Q. And specifically drug activity, correct?

8 A. You know, at first, I think I -- I kind of asked
9 him if there was anything happening in his neighborhood.
10 And then -- then I asked if there was any drug
11 complaints.

12 Q. Well, you weren't asking about block parties
13 right? When you say "I was asking if anything going on
14 in the neighborhood," you meant criminal activity,
15 right?

16 A. Yes.

17 Q. Okay. Now in paragraph 2, you state, "Affiant
18 avers that in early May 2020, a confidential informant
19 provided affiant of a black male know as, quote/unquote,
20 'Lays.'"

21 And give a physical description.

22 Do you see that?

23 A. I do.

24 Q. And is there anything that would pin the date
25 down more than May of 2020, early May 2020?

1 A. No.

2 Q. Okay. So you don't know what specific date you
3 received that information?

4 A. Correct.

5 Q. Do you know who the confidential informant was?

6 A. I do.

7 Q. Who was that?

8 A. I'm unsure of his first name. It's either
9 Nathaniel or Nathan Write.

10 Q. Nathan Wright, W-R-I-G-H-T?

11 A. (Indicating.) W-R-I-G-H-T, Wright.

12 Q. How did you come to meet with Mr. Wright?

13 A. I don't recall if it was via text message or
14 phone call. But I received most of this through text
15 messages with Mr. Wright.

16 Q. Okay. And how long had you worked with
17 Mr. Wright?

18 A. I don't remember how long.

19 Q. Okay. If this was received by a text message,
20 would that have been to a city-issued phone that you
21 had?

22 A. No.

23 Q. Would it have been to a personal phone?

24 A. Correct.

25 Q. What carrier would that have been with?

1 A. I do not remember who I had at that time. I have
2 changed carriers quite a few times. I don't remember.

3 **Q. Okay. Did you have a city-issued phone?**

4 A. No.

5 **Q. Okay. And do you know what the phone number was?**

6 A. At that time?

7 **Q. Yes, sir.**

8 A. I don't remember if it was my current number. I
9 don't remember.

10 **Q. Okay. So it may or may not have been your**
11 **current number?**

12 A. Correct.

13 MR. SCOTT: I don't want to put a phone
14 number on the record. Maybe just give it to me later.

15 MR. RUSSELL: Okay.

16 **Q. Did you save this text message?**

17 A. Like, put it in a case file or something?

18 **Q. Yes, sir.**

19 A. No.

20 **Q. Wouldn't that be important information to**
21 **maintain in a case file?**

22 A. I would have wrote the information that he gave
23 me with me on a note in the file.

24 **Q. So there should be a note in this investigation**
25 **file with this information, with the text message**

1 **information?**

2 A. You know, usually I keep a pad of paper with me
3 while I'm out on the road, making notes. And I know I
4 would have written it down on a pad of paper. I don't
5 remember if I actually took that note and put it in the
6 case file. But I definitely wrote it down on the
7 notepad.

8 **Q. All right. So the paper may or may not be in the**
9 **case file?**

10 A. Correct.

11 **Q. Okay. And how did you know Nathan Wright?**

12 A. I think earlier, I think as a unit, we were
13 hitting hot spots. And we made a traffic stop on
14 Mr. Wright. And he was in possession of some narcotics,
15 a small amount. And I was giving him the opportunity to
16 supply information.

17 **Q. Okay. So Mr. Wright would have been an**
18 **individual who was providing information, rather than**
19 **face criminal charges himself; is that fair?**

20 A. Yes.

21 **Q. And do you recall when you first encountered**
22 **Mr. Wright?**

23 A. No.

24 **Q. Would it have been shortly before May of 2020?**

25 A. I do not remember.

1 **Q. All right. And how did Mr. Wright know to reach**
2 **out to you in May of 2020 with information of Mr. Ellis,**
3 **if you know?**

4 A. You know, I think I advised him that had he
5 received any information about drug activity that he
6 would -- he should contact me.

7 **Q. Okay. Well, do you recall if you specifically**
8 **reached out to him about Mr. Ellis or 628 East 127th**
9 **Street?**

10 A. I don't know -- I don't remember how, if he
11 contacted me or I contacted him. But I think he
12 contacted me about the activity.

13 **Q. All right. Do you know one way or the other, as**
14 **you sit here today, whether you contacted him first**
15 **asking if he had any information?**

16 A. I don't remember.

17 **Q. All right. Is that a possibility, that you**
18 **contacted him first asking if he had any information?**

19 A. No. I don't think I would have asked him, "Hey,
20 do you -- were you familiar about this house?"

21 You know.

22 **Q. I guess what I'm trying to say --**

23 A. I don't think I reached out to him. I wouldn't
24 have done that. I wouldn't have asked an informant if
25 they were aware of a house that we received a complaint

1 on. I don't see myself doing that.

2 Q. Okay. So you think it was just a coincidence
3 that he happened to give you this information in May of
4 2020?

5 A. I just know that that's when he contacted me with
6 that information.

7 Q. Okay. Now in the next paragraph, paragraph 3,
8 you state, "Affiant arrested Ellis in 2019, having in
9 his possession heroin, carfentanil, cocaine, and
10 marijuana during a traffic stop. This case is open and
11 currently in the Court of Appeals."

12 Do you see that?

13 A. I do.

14 Q. And we can agree that on May 14th of 2019, the
15 criminal case, 2019 criminal case, was, in fact,
16 dismissed, correct?

17 A. That's what the docket says.

18 Q. Okay. And the appeal had been dismissed in April
19 of 2020, correct?

20 A. I don't know when that was. The entry of April
21 22nd?

22 Q. Yes, sir.

23 Is that correct?

24 A. Yeah. That's what the docket shows.

25 Q. Okay. And we can agree that your Search Warrant

1 Affidavit makes no mention of the fact that -- of the
2 Court's suppression ruling in the 2019 case, correct?

3 A. No. But I do mention that it was currently in
4 Appeals Court.

5 Q. Okay. And actually, in fact, you know that it
6 was not, correct?

7 A. Correct.

8 MR. RUSSELL: Objection.

9 Q. On this date, May 14th of 2020?

10 A. I now know that the prosecutor didn't get it in
11 on time.

12 Q. Okay. All right. I want to go down to the next
13 paragraph, please, number 4.

14 "Affiant avers that during the past 72 hours
15 affiant set up surveillance on 638 East 127th Street,
16 parens, the premises, end parentheses, period."

17 Do you see that?

18 A. I do.

19 Q. Okay. And just working backwards from the date
20 of this affidavit, would I be correct that the 72 hour
21 period would have begun on May 11th of 2020?

22 A. Correct.

23 Q. So if you are talking about 72 hours between
24 May 11, 2020 and May 14, 2020, correct?

25 A. Correct.

1 - - - -
2 (Thereupon, Plaintiff's Exhibit 4 was marked
3 for purposes of identification.)
4 - - - -

5 Q. Mr. Yasenchack, I'm going to hand you what we
6 marked as Plaintiff's Exhibit 4.

7 Take a minute to familiarize yourself with that.

8 Mr. Yasenchack, you had a chance to review 4,
9 Plaintiff's Exhibit 4?

10 A. Yes.

11 Q. And am I correct, sir, this is a Departmental
12 Information Form that you would have completed on or
13 about May 20th of 2020?

14 A. Yes.

15 Q. And what was the purpose of this form? Why did
16 you prepare this?

17 A. This is just a Form One Report that would have
18 accompanied the packet, the arrest packet, Grand Jury
19 packet.

20 Q. Okay. So would you typically complete a Form
21 One, like this, prior to going to the prosecutor's
22 office with a packet for the prosecutor's office to
23 review?

24 A. Yes.

25 Q. Okay. And I take it you would not typically

1 complete this type of form earlier in your investigation
2 just to keep the lieutenant or supervising officers
3 apprised of your activities; is that fair?

4 A. Correct.

5 Q. Let me ask you this: Did you have any system for
6 reviewing or keeping supervising officers apprized of
7 investigation activity for all of your activities?

8 A. Did we have a system?

9 Q. Yes, sir.

10 A. No.

11 Q. So was it just sort of ad hoc that you would go
12 to a supervisor, maybe if you thought there was
13 something of importance that they needed to know, or how
14 would that work?

15 A. If I knew the information I was gathering was
16 looking to result in an execution of a search warrant, I
17 would give the details to a superior.

18 Q. Okay. And would you just go into their office
19 and meet with them, or how would you get that
20 information to the superior?

21 A. Yeah. We would just meet at the office.

22 Q. Okay. And then, just looking at everything, were
23 there rotating supervisors or did you have multiple
24 supervisors during this period of time?

25 A. At this time our unit didn't have a direct

1 supervisor, Sergeant Kincaid, I can't remember if he
2 just got another positions or he may have been promoted
3 to lieutenant, and that was the reason why he left. But
4 there was a time period where we didn't have a direct
5 supervisor. And Lieutenant Gapente[spelling] and
6 Captain Cane, you know, tried to fill in for him.

7 **Q. Okay. And what was, as you understood, what was**
8 **the role of the supervising officer relative to your**
9 **individual case investigations?**

10 A. What was their responsibilities, as to
11 supervising me?

12 **Q. Yes, sir.**

13 A. I think they were just supposed to keep apprise
14 as to the status of our active cases.

15 **Q. Okay. Well, were they there to, as you**
16 **understood it, to provide guidance on how to provide the**
17 **investigation?**

18 A. Provide guidance? You know, Sergeant Kincaid,
19 after a few years of being our supervisor, he understood
20 how drug investigations occurred. Because I don't think
21 he did, you know, drug investigations until he, you
22 know, got into the sergeant of the Vice Unit. So he
23 had, like, a learning period of how the cases were
24 generated and stuff.

25 And so after he learned the process, I would go

1 to him for you know suggestions. And I definitely kept
2 him apprised of my cases.

3 Q. Okay. And was that through the course of
4 informal meetings? Or did you have a regular scheduled
5 meeting with him?

6 A. Just informal meetings.

7 Q. If you catch him in the office?

8 A. Yes.

9 Q. To your knowledge, does the City of Cleveland
10 Police Department have any policies that require
11 supervising officers to review active ongoing criminal
12 investigations?

13 MR. RUSSELL: Objection.

14 Q. To your knowledge?

15 A. Like, general police orders? I don't know.

16 Q. Okay. That's fair.

17 So as far as you knew, there was nothing that
18 said you had to bring case file investigations to a
19 supervising officer for review?

20 MR. RUSSELL: Objection.

21 Go ahead.

22 Q. If you know.

23 A. I don't know.

24 Q. Okay. All right. Okay. Looking at Plaintiff's
25 **Exhibit 4**, the Form One, in the second paragraph, you

1 indicate, "On May 11, 2020, I set up surveillance on 638
2 East 127th Street," correct?

3 A. Correct.

4 Q. All right. And let me back up. That's fine.

5 I haven't seen a duty report for May 11, 2020.
6 Do you know if one would have been completed?

7 A. I imagine so.

8 Q. Okay. Would that detail the time when you set up
9 surveillance and when you stopped the surveillance on
10 that day?

11 A. I don't think I put, like, exact times. But it
12 may. I don't remember.

13 Q. Okay. Do you remember how long you conducted
14 surveillance at that location on May 11, 2020?

15 A. I just remember it wasn't too long.

16 Q. Okay. So you think less than an hour, more than
17 an hour?

18 A. Definitely less than an hour. I would estimate
19 between 15 minutes and half hour.

20 Q. Okay. And would you have been observing the
21 residents from your vehicle or do you recall how you set
22 up surveillance?

23 A. I was in a vehicle.

24 Q. Okay. Parked near or across the street or
25 something like that?

1 A. I wouldn't have parked across the street.

2 Q. But where you had view of the house?

3 A. Yes.

4 Q. What you described -- first of all, you described
5 seeing a black Ford Explorer, correct?

6 A. Yeah. There was one parked in the street.

7 Q. Okay. And you ultimately determined that that
8 vehicle was associated with Mr. Ellis; is that right?

9 A. Yes. I had earlier -- it had the same place of
10 Henry, yesterday, Henry 8894.

11 Q. Okay. And before I forget, did any other law
12 enforcement personnel participate in the investigation
13 of May 11th, other than yourself?

14 A. I don't know if, you know, I asked somebody to
15 drive by the house or something. That's a possibility.
16 But I don't remember.

17 Q. Okay. So as you sit here today, you don't recall
18 anybody else being involved in the surveillance of this
19 location?

20 A. I don't remember.

21 Q. Okay. All right. And then after the black Ford
22 Explorer, you next describe a burgundy Dodge Magnum
23 parked on the street?

24 A. Yes.

25 Q. And you see two white males exit and enter the

1 accident residence of 638 East 127th Street, right?

2 A. Correct.

3 Q. At any time did you have any direct interaction
4 with that vehicle or those two males?

5 A. No.

6 Q. So you never stopped them or questioned them or
7 made any sort of search of their vehicle, correct?

8 A. Correct.

9 Q. And you didn't gather any evidence directly from
10 them, why they were there or what they were doing?

11 A. No.

12 Q. All right. And why was that? Did you not -- did
13 you not want to leave your post, where you were, or what
14 was the thought process there?

15 A. I think I was just waiting to see what the rate
16 of activity was.

17 Q. Okay. Now did you record it in any way? Did you
18 film it?

19 A. No.

20 Q. Use your body cam?

21 Did you have the ability to do that?

22 A. I can't remember if our unit had a camcorder or
23 not. I'm not sure.

24 Q. In other investigations, would you have equipment
25 available to you, whereby you could either photograph or

1 **film this type of surveillance, to record the activity?**

2 A. I don't remember if we had a camcorder at that
3 time. A lot of the times we have to report to our
4 personal phones to photograph. So I'm not sure if we
5 are -- our unit had a camcorder.

6 **Q. Do you recall in any of your earlier**
7 **investigations using a camcorder or any type of**
8 **recording device to record this type of surveillance?**

9 A. There was a couple of cases where I had a
10 camcorder, I think the unit had one, and I used it
11 during a couple of cases.

12 **Q. Okay. You would agree that that's strong**
13 **evidence that could potentially be used in court if you**
14 **are trying to establish that a certain activity occurred**
15 **during an investigation?**

16 A. Just a video of showing the volume of possibly
17 drug buyers going through and from a house.

18 **Q. That would be one evidentiary value, correct?**

19 A. Seeing the video of people going into a house and
20 leaving may -- may be -- you know, the recovery of the
21 drugs from the occupants, I think that that's strong
22 evidence of...

23 **Q. Well, if you wanted to establish specific people**
24 **were at that location, that would certainly be, a video**
25 **or photograph would certainly be strong evidence that**

1 **they were, in fact, at that location, isn't it?**

2 A. From the distance I was at, a photo wouldn't have
3 been...

4 **Q. Well, how far away do you think you were?**

5 A. I was a good distance. I'm using high-powered
6 binoculars to see the activity.

7 **Q. Were you a couple of houses down the street or**
8 **were you on a different block?**

9 A. More than a few houses.

10 **Q. More than a few houses? So you are observing**
11 **this from more than a few houses away?**

12 A. Yes.

13 **Q. Okay. Again, do you have any idea of the total**
14 **distance you were from this house?**

15 A. No.

16 **Q. You next describe a blue Saturn that parks on the**
17 **street and a white female exits.**

18 **Do you see that?**

19 A. I do.

20 **Q. And she ultimately enters the house, correct?**

21 A. She does.

22 **Q. And it looks like at about the same time, a white**
23 **vehicle pulls up into the driveway; is that right?**

24 A. Yes.

25 **Q. Okay. So what you describe in paragraph four is**

1 the black Ford Explorer that's associated with William
2 Ellis, and a total of three vehicles that come to the
3 house and subsequently leave, correct?

4 A. Yep.

5 Q. And there's a total of five individuals
6 associated with those three vehicles, correct?

7 A. Yep.

8 Q. You have no interaction with the two white males
9 in the burgundy Dodge Magnum, correct?

10 A. Correct.

11 Q. You do stop the white female in the blue Saturn,
12 correct?

13 A. No.

14 Q. Oh, you do not? Do you have any interaction with
15 her?

16 A. No.

17 Q. Okay. And you collect no evidence from her,
18 correct?

19 A. Correct.

20 Q. You stop the white vehicle with two individuals,
21 I believe it turns out to be a male and female, correct?

22 A. Yes.

23 Q. Okay. And that's described in Judge Pearson's
24 order. As Matthew Radovanic and Vanessa Smith; is that
25 right?

1 A. Those were the two individuals that I stopped.

2 Q. Okay. And you say that those two individuals
3 became confidential informants, right?

4 A. Yes.

5 Q. All right. And were any criminal charges pressed
6 against those two individuals?

7 A. No.

8 Q. Did you find evidence of criminal activity that
9 would have supported criminal charges for either of
10 those individuals?

11 A. Yes.

12 Q. That would have been drug possession, something
13 like that?

14 A. Yes.

15 Q. Okay. So what you are telling me is that in
16 exchange for not being charged criminally, these
17 individuals agreed to be confidential informants
18 correct?

19 A. Correct.

20 Q. And the information that they provided, would
21 they have provided it then on scene when you interacted
22 with them on May 11, 2020?

23 A. Yeah. During the stop, I would have collected
24 some information. I don't remember if they came back to
25 the district and I conducted a more thorough interview

1 with them. But Matthew eventually came to my office and
2 had more and I received further information from him.

3 Q. Okay. So you recall meeting at least with
4 Matthew Radovanic some time after May 11th to gather
5 additional information from him?

6 A. Some time after the stop. It might have been
7 about that same day that he came back to the office or,
8 you know, another day.

9 Q. But Vanessa Smith, you do not recall her coming
10 to the office?

11 A. I don't remember if she came or not.

12 Q. Okay. And would there have been a reason why she
13 would not have come or been required to come?

14 A. I don't remember.

15 Q. Okay. Do you recall anyone else participating in
16 the office interviews of either of those individuals?

17 A. I don't recall if anybody else was in the office.
18 Chances are there were more people there, but I don't
19 remember.

20 Q. Okay. And did they give any sort of recorded or
21 written statement?

22 A. No.

23 Q. Is there a reason why it wasn't recorded or in
24 writing?

25 A. I just probably took notes as to the information

1 they supplied.

2 Q. Again, would those notes be in the investigative
3 file?

4 A. Possibly.

5 Q. Okay. You wouldn't necessarily always put your
6 notes in the investigative file?

7 A. Sometimes I would.

8 Q. Okay. But I take it that sometimes you would
9 not?

10 A. Correct.

11 Q. Okay. To your knowledge was there any sort of
12 departmental policy that would have required a statement
13 like this from a confidential informant to be either
14 written or recorded somehow?

15 MR. RUSSELL: Objection.

16 Go ahead.

17 A. No.

18 Q. No, there was not a policy; or no, you were not
19 aware of one?

20 A. I was not aware of any policy.

21 Q. Okay. So I take it, it was not a practice,
22 certainly not a practice of yours, to record statements
23 of confidential informants like this?

24 A. Correct.

25 Q. To your knowledge, did any other detectives in

1 **the Fifth District Detective Bureau record statements**
2 **from confidential informants?**

3 MR. RUSSELL: Objection.

4 **Q. If you know.**

5 A. In my unit or the Detective Bureau?

6 **Q. In your unit.**

7 A. You stated Detective Bureau.

8 **Q. Am I saying it wrong?**

9 A. I'm in the Vice Unit.

10 **Q. The Vice Unit.**

11 A. No. I was unaware of anybody else that would
12 record interviews with informants.

13 **Q. Okay. So you are not aware of any other**
14 **detectives in the Vice Unit that would record**
15 **confidential informants' statements?**

16 A. Correct.

17 **Q. And you would agree though that it would be**
18 **beneficial if those were recorded statements in a**
19 **subsequent prosecution?**

20 A. They -- a recording of that may have some value.
21 But it also -- there's an also a record there then of
22 that person supplying me information.

23 You know, I do have a duty to help protect
24 informants that give me information. A lot of
25 informants are worried about their safety when supplying

1 this information. That they are often worried that that
2 information will come back to the drug dealer and harm
3 may come to them.

4 Q. Well, certainly in a case like this, I mean, all
5 of these individuals were ultimately identified in court
6 and the court proceedings, right?

7 A. I know that now.

8 Q. Okay. Now I know there was a search warrant was
9 issued, correct?

10 A. Yep.

11 Q. And a search of Mr. Ellis's home was conducted,
12 right?

13 A. Correct.

14 Q. And you participated in that, together with a
15 number of other law enforcement officers; is that fair?

16 A. Yes.

17 Q. To your knowledge, was there -- when you went to
18 get the search warrant from Judge McCormick was there
19 any -- to your knowledge, was there any other law
20 enforcement agency investigating Mr. Ellis?

21 A. No.

22 Q. And to your knowledge, no other law enforcement
23 agency was seeking a search warrant of Mr. Ellis's home
24 at that time?

25 A. I had no knowledge of that.

1 Q. Okay. And certainly it was your expectation that
2 upon execution of the search warrant that you would find
3 evidence of criminal activity and criminal charges would
4 be brought against Mr. Ellis; is that fair?

5 A. Yes.

6 Q. And now in this case, after the search of
7 Mr. Ellis's home, you did not lead the subsequent
8 criminal case, correct? You're not the one that brought
9 it to the prosecutor's office?

10 A. Correct.

11 Q. And that was another -- is he a member of the
12 Cleveland Police Department, Kopchak? Is he a member
13 of Cleveland --

14 A. Yes.

15 Q. Okay. And is it your understanding that Kopchak
16 brought the case to a federal prosecutor; is that
17 correct?

18 A. Yes.

19 Q. Do you know why he went to a federal prosecutor
20 and not a state prosecutor?

21 A. He is a -- what is his title?

22 He's a member of a task force. I think he's with
23 the ATF. And one of his roles is to examine cases that
24 kind of fit the federal requirement for prosecution.
25 And, you know, even if zone-car patrolman made arrests,

1 like gun arrests, he would evaluate the case and
2 prosecutor cases that he deemed -- that had all the
3 elements to charge him federally.

4 **Q. Okay. Well, you had participated in federal**
5 **prosecutions before, correct?**

6 A. Prosecutions?

7 **Q. Yes, sir.**

8 A. No. There's usually a detective that, other than
9 myself, that handled all that. I never presented a case
10 federally.

11 **Q. Okay. You may have been a witness in a case but**
12 **you never presented one to a prosecuting attorney; is**
13 **that fair?**

14 A. Yes.

15 **Q. But up to this point in time, you had certainly**
16 **been the lead investigator at this point in time being**
17 **when you prepared the Search Warrant Affidavit and**
18 **obtained the search warrant, you would been the lead**
19 **investigator, correct?**

20 A. Yes.

21 **Q. And maybe the only investigator, correct?**

22 A. No. At that point, we had a number of assisting
23 detectives that helped during the search warrant.

24 **Q. Well, I understand that.**

25 A. But I was the only lead.

1 Q. But up to May 14, 2020, when you obtained the
2 search warrant, up to that point in time, you were
3 really the only investigator actively involved in the
4 case, correct?

5 MR. RUSSELL: Objection.

6 A. I may have had detectives assist with doing some
7 surveillance.

8 Q. You don't recall one way or another?

9 A. No.

10 Q. Okay. So why was the investigation or the
11 responsibility for presenting the case to the prosecutor
12 handed off to Officer Kopchak?

13 MR. RUSSELL: Objection.

14 Go ahead.

15 A. I assume that Detective Kopchak thought that the
16 case met the standards to present it federally.

17 Q. Okay. Well, certainly, you had the ability to
18 present the case to a state prosecutor, correct?

19 A. Yes.

20 Q. Okay. So how was this determination made that
21 you would not go to a state prosecution, but Officer
22 Kopchak go to a federal prosecutor?

23 A. I think Kopchak, because of his task force with
24 the ATF, and he emphasized gun cases, and there was a
25 gun recovered from Mr. Ellis's residence, that there was

1 an emphasis for him to present weapon cases federally.

2 So he thought that this case --

3 **Q. Well, did Officer Kopchak outrank you?**

4 A. No.

5 **Q. Was there discussion between you and Officer**
6 **Kopchak about how the case would proceed following the**
7 **search of Mr. Ellis's residence?**

8 A. You know, Detective Kopchak assisted on the
9 search warrant. And he was aware of the gun being
10 recovered and drugs being recovered, so he may have -- I
11 don't know if we had talked or he just deemed that,
12 "Hey, I'm going to take this case and charge it
13 federally."

14 **Q. Well, were you reluctant to go back to state**
15 **court, given what happened with the 2019 case?**

16 A. No.

17 MR. RUSSELL: Do you have; is this a good
18 time to take a short break.

19 - - - -

20 (Off the record.)

21 - - - -

22 BY MR. SCOTT:

23 **Q. So when your affidavit in paragraph four refers**
24 **to during the past 72 hours the affiant set up**
25 **surveillance at 628 East 127th Street. You told me**

1 **about the, I think you described it as the 15 or 20**
2 **minutes you were there on May 11, 2020, correct?**

3 A. Correct.

4 Q. Okay. And do you recall returning to that
5 **location at any time after May 11, 2020, but prior to**
6 **May 14th of 2020?**

7 A. I don't remember distinctly doing that it, but I
8 probably did further surveillance after that. At the
9 very least, checking to see if the car was still there,
10 like, especially the morning of or the night before the
11 search warrant was executed.

12 - - - -

13 (Thereupon, Plaintiff's **Exhibit 5** was marked
14 for purposes of identification.)

15 - - - -

16 Q. Let me hand you what we've marked as Plaintiff's
17 **Exhibit 5.** And that's a one page document.

18 - - - -

19 (Thereupon, Plaintiff's **Exhibit 6** was marked
20 for purposes of identification.)

21 - - - -

22 Q. And here's Plaintiff's **Exhibit 6**, which is
23 **another one page document.**

24 Plaintiff's Exhibits 5 and 6 are Duty Reports.
25 **And I believe Plaintiff's **Exhibit 5** is the Duty Report**

1 **for May 12, 2020; is that correct?**

2 A. Yes.

3 **Q. And Exhibit 6 is the Duty Report for**
4 **May 13, 2020?**

5 A. Yes.

6 **Q. Is there anything on Plaintiff's Exhibit 5 that**
7 **suggests additional surveillance of Mr. Ellis's**
8 **residence?**

9 A. Brackland is very close to this -- the house of
10 Mr. Ellis. I may have stopped, drove by the house on
11 Tuesday, during that surveillance. But I don't
12 remember.

13 **Q. Okay. Do you recall, as you sit here today,**
14 **whether or not the case invest that's referenced next to**
15 **the Brackland entry on Plaintiff's Exhibit 5, was that a**
16 **separate investigation from --**

17 A. Yes.

18 **Q. Okay. But you believe in the same general area;**
19 **is that correct?**

20 A. Yeah. It's very close to Mr. Ellis's house.

21 **Q. Okay. And then as regards to Plaintiff's Exhibit**
22 **6, the Duty Report for May 13, 2020, is there anything**
23 **on there that suggests additional surveillance on**
24 **Mr. Ellis's residence?**

25 A. Yes. The second line, East 127 and Shaw.

1 Q. Okay. Very good. And now there's no times
2 indicated. Do you have any recollection as to how long
3 you would have observed the residence on May 13th of
4 2020?

5 A. No.

6 Q. Okay. Do you think it might have just been a
7 drive-by to see if the vehicle was still there?

8 A. I don't remember.

9 Q. Okay. Would there be notes or something in the
10 investigation file that would tell us that?

11 A. Possibly.

12 Q. Okay. Is that something, typically, you would
13 have made notes about?

14 A. Sometimes.

15 Q. Okay. Mr. Yasenchack, do you recall being
16 involved in a criminal prosecution captioned, State of
17 Ohio, versus Clyde Woods, in 2012?

18 A. Vaguely.

19 Q. Okay. Do you recall that there was a suppression
20 issue in that criminal proceeding, requesting the
21 suppression of evidence?

22 A. Vaguely.

23 Q. Okay. And do you recall that you were directly
24 involved as one of the investigators in that particular
25 criminal prosecution?

1 A. I think at the time Donald Kopchak and I were
2 patrolmen.

3 Q. Okay. Is this the same Kopchak that was involved
4 in the federal prosecution of Mr. Ellis?

5 A. Yes.

6 Q. All right. So you two had been on the force
7 together for some time?

8 A. Yeah. At that time, he probably only had a few
9 years, Donald.

10 Q. Okay. And do you recall evidence being
11 suppressed based upon the Trial Court's conclusion, that
12 the justification for the search was pretextual?

13 A. I vaguely remember that that judge didn't think
14 we could pace a car for speed, as being the reason why
15 she suppressed the evidence.

16 Q. Okay. Well, do you recall if the justification
17 for searching the vehicle was an inventory search or
18 something like that?

19 A. I don't remember.

20 Q. Okay. You do recall though that the judge
21 suppressed the evidence that was gathered during that
22 stop?

23 A. Yes.

24 Q. And do you recall that the suppression decision
25 in the Clyde Woods, Jr. case from 2012 was appealed to

1 the 8th District Court of Appeals?

2 A. No.

3 Q. Okay. Are you aware -- do you have any
4 recollection of the Court of Appeals upholding that
5 decision?

6 A. No.

7 Q. Okay. Do you remember what your duty assignment
8 was in 2012 relative to that criminal case?

9 A. I don't know if we were on patrol or in the CSU
10 Unit. I don't remember.

11 - - - -

12 (Thereupon, Plaintiff's Exhibit 7 was marked
13 for purposes of identification.)

14 - - - -

15 Q. Mr. Yasenchack, I'm going to hand you what's been
16 marked as Plaintiff's Exhibit 7, which is an opinion
17 from the 8th District Court of Appeals, regarding the
18 Clyde Woods, Jr. criminal prosecution. And I mean, you
19 can familiarize yourself with it. But let me ask you
20 this: Do you know or do you recall, as you sit here
21 today, whether or not you've seen this opinion before?

22 A. I do not think so.

23 Q. Okay. All right. That's fine. If you turn to
24 the second to the last page, there is lines that have
25 been written on there. And there's a sentence at the

1 bottom of the first paragraph.

2 "This is a classic example of a police officer's
3 intentional use of an unlawful traffic stop. Under a
4 questionable codified ordinance for the sole purpose of
5 conducting a fishing expedition for evidence of another
6 crime and a tailored script at the motion to suppress
7 hearing to justify the stop and subsequent searches."

8 Do you see that?

9 MR. RUSSELL: Objection.

10 Go ahead.

11 A. I see that.

12 Q. Okay. Does that refresh your recollection as to
13 why the evidence was suppressed in the Clyde Woods case?

14 MR. RUSSELL: Objection.

15 Go ahead.

16 A. No.

17 Q. Okay. To your knowledge, did the City of
18 Cleveland conduct any sort of review or impose any sort
19 of discipline for either you or Officer Kopchak as a
20 result of the suppression of evidence in the Clyde Woods
21 case?

22 MR. RUSSELL: Objection.

23 Go ahead.

24 A. Am I aware of any discipline resulting in
25 evidence being suppressed?

1 Q. Yes, sir. Did anybody review this and call you
2 and/or Officer Kopchak into the office and offer any
3 sort of discipline or re-instruction, or anything like
4 that?

5 A. This was 11 years ago.

6 Q. I appreciate that.

7 A. I don't remember.

8 Q. Okay. To your knowledge, sir, was there any
9 requirement for you to advise a court in any sort of
10 subsequent requests for warrants or in subsequent
11 affidavits of any history where your credibility had
12 been called into question?

13 MR. RUSSELL: Objection.

14 Go ahead.

15 A. Could you repeat that question again?

16 Q. Sure.

17 To your knowledge, was there any requirement that
18 you advise any judicial officer, whether it be in a
19 search warrant application or otherwise, of a prior
20 situation where your ability would have been called into
21 question?

22 A. No.

23 Q. And certainly, we can agree that the fact that
24 you had previously been an investigating officer in a
25 criminal matter where evidence was suppressed because

1 **your credibility was questioned, was not part of your**
2 **Search Warrant Affidavit on May 14, 2020, right?**

3 MR. RUSSELL: Objection.

4 Go ahead.

5 A. You are saying that I didn't mention it in my
6 affidavit?

7 **Q. Yes, sir.**

8 A. I just mentioned that the case was open and
9 currently in appeals.

10 **Q. Correct. There is no reference to the fact that**
11 **evidence was suppressed or that your credibility was in**
12 **any way questioned, correct?**

13 A. I did put in that is it was open and currently in
14 Appeals Court.

15 **Q. All right. And you are aware, as you sit here**
16 **today, that the federal case against Mr. Ellis was**
17 **ultimately dismissed, correct?**

18 A. Yeah. I am aware that the confidential
19 informants lied in federal court to get the charges
20 dismissed.

21 **Q. So you are aware that the confident informants**
22 **did not testify consistent with what was represented in**
23 **the Search Warrant Affidavit, correct?**

24 A. I am aware that the informants recanted their
25 testimony that they supplied in federal court.

1 Q. Again, if we had a recording of some kind of the
2 information they gave you, there would be a way of
3 demonstrating clearly that their testimony in court was
4 different than what they told you?

5 A. Matthew Radovanic, I think is his name, admitted
6 to Internal Affairs Sergeant Sheehan that the
7 information he supplied during federal court was
8 inaccurate, and that he lied. And that they the
9 information I put in the affidavit was correct.

10 Q. Okay. Is that a recorded statement somewhere?

11 A. Yes.

12 Q. Okay. And it's not just the officer's summary,
13 it's what Mr. Radovanic stated?

14 A. Yes.

15 Q. Okay. All right. And you believe that's in his
16 OPS interview?

17 A. Yes.

18 Q. But at least as to what he testified under oath
19 in court was different than what was reflected in the
20 Search Warrant Affidavit?

21 A. I am aware that he provided false information
22 during a federal court proceedings.

23 Q. That was different than what was in your
24 affidavit?

25 A. False information.

1 Q. Okay. Have you ever spoken to Mr. Radovanic
2 directly since the federal criminal charges against
3 Mr. Ellis were dismissed?

4 A. No.

5 Q. Did you make any effort to speak with either him
6 or Vanessa Smith after the Federal Court Franks hearing?

7 A. No.

8 Q. And I take it you did not participate in the
9 Franks hearing?

10 A. No.

11 Q. In fact, did you participate in the actual
12 federal criminal prosecution at all?

13 A. No.

14 Q. So you didn't meet with the prosecutor or didn't
15 testify for the Grand Jury and weren't a witness in the
16 case?

17 A. I had a quick conversation over the phone with
18 the prosecutor. That was it.

19 Q. Okay. They were just mainly coordinating with
20 Officer Kopchak, right?

21 A. Correct.

22 Q. Was there any discussion between you and Officer
23 Kopchak or anyone else involved in the federal
24 prosecution that the District Attorney's Office would be
25 moving to dismiss the charges against Mr. Ellis once the

1 **evidence had been suppressed?**

2 A. No.

3 **Q. Is it your understanding that the criminal**
4 **charges though were ultimately dismissed based upon the**
5 **request of the District Attorney's Office to dismiss**
6 **those charges?**

7 A. Due to the informants providing false testimony,
8 yes.

9 MR. SCOTT: Mr. Yasenchack, I believe those
10 are all of the questions I have for you today. I want
11 to thank you for coming here today and giving me the
12 opportunity to speak with you.

13 And I believe your counsel will tell you
14 about your right --

15 MR. RUSSELL: Yeah. You have the right to
16 review the transcript in advance of it being kind of
17 formalized, or you can waive signature. It's entirely
18 your choice.

19 But if you ask to review, it will be
20 prepared. You will have a chance to sit down and review
21 the transcript and make sure it's accurate.

22 THE WITNESS: Sure. Sure.

23 MR. RUSSELL: We'll review.

24 MR. SCOTT: Thank you so much.

25 - - - -

1 (Deposition concluded at 11:56 a.m.)

2 - - - -

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C E R T I F I C A T E

I, Denise Cardona, a Notary Public within and for the State of Ohio, do hereby certify that I attended the foregoing hearing in its entirety, that I wrote the same in stenotypy, and that this is a true and correct transcript of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 8th day of August A.D. 2023.



Denise Cardona, Notary Public, State of Ohio
1020 Ohio Savings Plaza, 1801 East 9th Street,
Cleveland, Ohio 44114

My commission expires November 29, 2026.

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STATE OF OHIO)	COURT OF COMMON PLEAS
)	CRIMINAL DIVISION
COUNTY OF CUYAHOGA)	<u>AFFIDAVIT FOR SEARCH WARRANT</u>

Before me a Judge of the Court of Common Pleas, personally appeared the undersigned, Detective Jeffrey Yasenchack, Badge #2362, who being first duly sworn deposes and says that he is a member of the Cleveland Police Department. Affiant states that he has been a member of the Cleveland Police Department for nearly twenty-two years, had been a member of the Cleveland Police Department Narcotics Unit for two years, and has been a detective in the 5th District Vice unit for the past six years. Affiant states that he has received training in the identification and testing of illegal narcotics, recognition of controlled substances, the methods of packaging controlled substances on the street and the manner in which sellers of controlled substances operate and the detection of narcotics trafficking as his basic course at the Cleveland Police Academy. Affiant states that he has made thousands of arrests for violations of state drug laws. Affiant has interviewed hundreds of drug traffickers as well as drug abusers. Affiant has participated in the execution of hundreds of search warrants. Affiant has participated in hundreds of purchases of narcotics using confidential informants. Based on the above training and experience, affiant is familiar with the modus operandi of persons involved in the illegal distribution of controlled substance as well as the terminology used by persons involved in the illegal distribution of controlled substances. Affiant has participated with other members of his unit in an ongoing investigation into the drug trafficking operations described below; affiant has not always personally observed everything described below, but that which he did not personally observe was described to him by the other investigating officers who did.



2913, 2923, and 2925 or other fruits and instrumentalities of crimes at the present time unknown.

The facts upon which Affiant bases such belief are as follows:


1. Affiant avers that in mid April 2020 he received information from a concerned citizen about a black male residing at 638 East 127 St. selling drugs out of his house. The citizen further stated that a lot of white people were arriving at this house, staying a short time and then leaving and the male has been driving a black SUV.
2. Affiant avers that in early May 2020 a confidential informant (CI) provided affiant with information on a black male known as "Lays," described as tall, over six feet, 240 lbs., bald or shaved head, approximately 35-40 years old, drives a black Ford Explorer with Ohio plate HYH8894, and lives at 638 East 127 St. Affiant using google maps brought up this area and CI pointed out the house. CI stated he sells heroin and crack cocaine and instructed affiant to watch the house and observe the volume of white people arriving to buy drugs.
3. Affiant avers that he ran the plate HYH8894 through the OHLEG database and learned the owner was a known male, William Ellis, dob 9-18-1978, SS#***-**-6706. The CI when shown a BMV photo of Ellis positively identified him as the male CI knew as "Lays." Affiant arrested Ellis in 2019 having in his possession heroin, carfentanil, cocaine, and marijuana during a traffic stop. This case is open and currently in appeals court.
4. Affiant avers that during the past seventy-two hours affiant set up surveillance on 638 East 127 St. (the Premises). The black Ford Explorer was parked on the street in front of the premises. After a few minutes a burgundy Dodge Magnum parked on the street. Two white males exited and knocked on the front door. Ellis opened the door and held the security door open while the two white males entered the premises. A blue Saturn parked on the street, a white female exited, and walked to the premises' front door. She was also let in by Ellis who stepped onto the porch, looked down the street just as a white vehicle pulled into the driveway of the premises. Two people from that vehicle entered the premises. The first two males exited and drove off. The female exited, re-entered the Saturn, and drove off. The listed owner of the Saturn who matched the female affiant observed had convictions for drug possession. A couple minutes later the last two people exited the premises and drove off. Affiant stopped this last vehicle and recovered fentanyl from the occupants.
5. Affiant avers that the occupants became confidential informants (CIs) and supplied information about their dealer known as "Blaze." He was described as a black male, 6'4", 250 lbs., bald with a beard, about 40 years old. CIs positively identified their dealer when shown a BMV photo of Ellis. They had purchased heroin from Blaze over a dozen times, contacting him via phone#216-407-1016.

6. Affiant avers that he field tested, using a NIK field test kit, a sample of the suspected heroin, which did test positive for the presence of fentanyl. Affiant avers that the NIK field test kit has been utilized by affiant and members of the Cleveland Police Department in the past on numerous occasions, and when said field tested substances were re-tested by the Cuyahoga county lab, the results of the NIK test have always proven to be true and accurate; said field test has never proven to be inaccurate in the experience of affiant. Affiant avers that the fentanyl was sealed into drug bag#589960 and has been submitted to the county lab for testing, results still pending.
7. Affiant avers that a check of the Cuyahoga county felony docket revealed the following convictions for Ellis: 1996 case# CR-96-346236 pleading guilty to attempted drug possession M1 receiving nine months of community control, 1997 case# CR-97-349373 drug trafficking F4, drug possession F5 receiving one year of community control, 2000 case# CR-00-397031 receiving stolen property (MV) receiving one year of community control, 2001 case# CR-01-415901 fleeing and eluding M1 receiving a six month jail term, 2006 case# CR-07-495646 kidnapping with sexual motivation spec F1, gross sexual imposition F4, assault M1, receiving a five year prison term, 2007 case# CR-07-498821 felonious assault F3, criminal damaging M1 receiving a three year prison term, and open 2020 case# CR-20-648922 failure to comply with a police order.
8. Affiant avers that a check of the OHLEG database revealed an eSORN entry for Ellis due to his gross sexual imposition conviction in 2007 and has to register his address with the Cuyahoga County Sheriff's office. The last supplied address was 638 East 127 St. and listed his vehicle as a black Ford Explorer with temp tag H237873, which is the same Explorer with Ohio plate HYH8894.
9. Based on these facts, affiant avers that he has probable cause to believe, and does believe that the above described items will be found within the Premises, attached garage, curtilage, and all persons, vehicles, and safes located therein.
10. In the experience of affiant, persons who traffic in illegal drugs frequently keep records of illegal transactions, including computers and computer files and discs, and evidence of communications used in the furtherance of drug trafficking activity, including, but not limited to, pagers, cellular telephones, answering machines, and answering machine tapes.
11. In the experience of affiant, persons who traffic in illegal drugs frequently keep weapons, such as firearms, on or about their person, or within their possession, for use against law enforcement officials, as well as other citizens.
12. In the experience of affiant, narcotic drugs are frequently carried or concealed by people who are present at locations where drugs are used, possessed, kept, or being sold and the size of usable quantities of drugs are small, making them easy to conceal on one's person. It is also affiant's experience that drug houses will be occupied by numerous individuals. Some persons will be involved with the direct sales, some

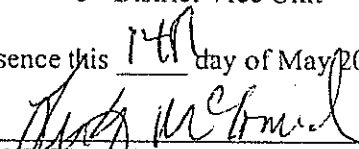
with the job of protecting the premises, some with preparing and packaging drugs, and some with the collection of the monies generated from the illegal activity. It is also affiant's experience and training that those who are traffic in illegal drugs will usually not permit those who are unaware or uninvolved in drug trafficking activity or use within the premise where the trafficking is conducted. It is therefore necessary to search all persons located in the premises.

13. Affiant avers that in his experience, persons who traffic in illegal drugs frequently keep illegal narcotics, records of illegal transaction, money, firearms, weapons and other contraband in safes.
14. Affiant avers that it may urgently be necessary that the Premises be searched in the night season forthwith to prevent the above-described property from being concealed or removed, and for the safety of the executing officers.

FURTHER AFFIANT SAYETH NAUGHT.


Affiant
Jeffrey Yasenchack, Detective
Cleveland Police Department
5th District Vice Unit

Sworn to before me and subscribed in my presence this 14th day of May 2020


JUDGE, COURT OF COMMON PLEAS
Cuyahoga County, Ohio

CASE INFORMATION**CR-19-637876-A THE STATE OF OHIO vs. WILLIAM ELLIS**[View Printer Friendly Version](#)**Docket Information**

From Filing Date

Docket Type 1

Docket Type 2

Docket Type 3

Docket Type 4

Filter Results

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Start Search



Proceeding Date	Filing Date	Docket Party	Docket Type	Docket Description	View Image
05/14/2020	05/14/2020	N/A	JE	STATE'S MOTION TO DISMISS INDICTMENT FILED ON 05/13/2020 IS GRANTED. CASE IS DISMISSED WITHOUT PREJUDICE. 05/14/2020 CPRMD 05/14/2020 09:43:29	
05/13/2020	05/13/2020	P1	NT	STATE'S SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY UNDER RULE 16, FILED.	
05/13/2020	05/13/2020	P1	MO	MOTION FILED BY P1 THE STATE OF OHIO STATE'S MOTION TO DISMISS INDICTMENT 05/26/2020 - UNKNOWN	

**PLAINTIFF'S
EXHIBIT**2

04/22/2020	04/22/2020 N/A	JE	Sua sponte, this appeal is dismissed for lack of lack of jurisdiction. Having considered the parties' briefs filed in response to this court's show cause order of March 30, 2020, we conclude that appellant's untimely appeal outside the relevant period specified in Crim.R. 12(K) and App.R. 4(B)(4) deprived the court of jurisdiction over this appeal. See State v. Bassham, 94 Ohio St.3d 269, 2002-Ohio-797, 762 N.E.2d 963. Appeal is dismissed. Notice issued.
09/30/2019	09/30/2019 D1	CL	RECORD ON APPEAL, PAGINATION SHEET AND CRIMINAL FILE SENT TO THE COURT OF APPEALS.
09/05/2019	09/05/2019 D1	SR	APPEAL, PRCPE, & DCKTNG STMNT(39687158) SENT BY REGULAR MAIL SERVICE. TO: CHRISTINE A. RUSSO 11005 PEARL ROAD SUITE 4 STRONGSVILLE, OH 44136-0000

09/05/2019	09/05/2019 D1	NT	NOTICE OF APPEAL FILED BY PLAINTIFF'S COUNSEL AND THE COURT OF APPEALS CASE NUMBER IS CA- 108970
09/05/2019	09/05/2019 P1	NT	NOTICE OF APPEAL FILED
08/26/2019	08/26/2019 N/A	CS	COURT REPORTER FEE
08/23/2019	08/23/2019 N/A	JE	PRETRIAL SET FOR 09/05/2019 AT 10:00 AM. AT THE REQUEST OF DEFENDANT, 08/23/2019 CPRMD 08/23/2019 14:31:46
08/23/2019	08/23/2019 N/A	JE	DEFENDANT IN COURT. COUNSEL CHRISTINE A. RUSSO PRESENT. PROSECUTOR(S) CAROLINE NELSON PRESENT. COURT REPORTER KERRI NESTOR PRESENT. THIS MATTER IS SET FOR RULING ON MOTION TO SUPPRESS FILED BY THE DEFENDANT ON 05/16/2019. DEFENDANT'S MOTION TO SUPPRESS FILED ON 05/16/2019 IS GRANTED. MATTER IS SET FOR PRETRIAL ON

DATE	TIME	LOCATION	OFFICER	REMARKS
09/05/2019	AT 10:00	AM. 08/23/2019	CPRMD 08/23/2019	14:30:29
08/09/2019	08/09/2019 N/A	SB	SHERIFF SERVICE	FEEES FOR SUBPOENA NUMBER 1294740, IN THE AMOUNT OF \$8.50.
08/09/2019	08/09/2019 N/A	SB	SHERIFF SERVICE	FEEES FOR SUBPOENA NUMBER 1294739, IN THE AMOUNT OF \$8.50.
08/07/2019	08/07/2019 N/A	CS	COURT REPORTER	FEE
08/06/2019	08/06/2019 N/A	JE	DEFENDANT IN	COURT. COUNSEL CHRISTINE A. RUSSO PRESENT. PROSECUTOR(S) CAROLINE NELSON PRESENT. COURT REPORTER LORRAINE J KLODNICK PRESENT. PROSECUTOR CARL MAZZONE, PRESENT. CITY OF CLEVELAND POLICE DETECTIVE JEFFREY YESENCHACK, PRESENT ON BEHALF OF THE STATE. THIS MATTER IS SET ON THE DEFENDANT'S

MOTION TO
SUPPRESS FILED ON
05/16/2019. THE
COURT HEARD
OPENING
STATEMENTS. THE
COURT HEARD
TESTIMONY THE
STATE RESTS.
DEFENSE ENTERED
EXHIBITS A, B, C,
AND D. THE COURT
HEARD CLOSING
ARGUMENTS. THE
COURT RULED THIS
MATTER HEARD
AND SUBMITTED.
DEFENSE COUNSEL
TO SUBMIT TO THE
COURT A
FORMATTED
VERSION OF
EXHIBITS C AND D.
BY 08/19/2019.
HEARING
CONTINUED TO
08/23/2019 AT 01:30
PM 08/06/2019
CPRMD 08/06/2019
15:38:16
08/06/2019 08/06/2019 N/A CS CALLING WITNESS
08/06/2019 08/06/2019 N/A SB WITNESS VOUCHER
PRINTED FOR
SUBPOENA 1294739
07/24/2019 07/24/2019 N/A SB STATE SUBPOENA
ISSUED (1294740)
07/24/2019 07/24/2019 N/A SB STATE SUBPOENA
ISSUED (1294739)
07/18/2019 07/18/2019 N/A SB SHERIFF SERVICE
FEES FOR

07/18/2019	07/18/2019 N/A	SB	SHERIFF SERVICE FEE FOR SUBPOENA NUMBER 1291269, IN THE AMOUNT OF \$8.50.
07/16/2019	07/19/2019 N/A	JE	MATTER CONVERTED TO AN ATTORNEY CONFERENCE. MOTION TO SUPPRESS HEARING SET FOR 08/06/2019 AT 09:00 AM. 07/16/2019 CPRMD 07/19/2019 10:33:07
07/16/2019	07/16/2019 N/A	CS	CALLING WITNESS WITNESS VOUCHER PRINTED FOR SUBPOENA 1291269
07/16/2019	07/16/2019 N/A	SB	CALLING WITNESS WITNESS VOUCHER PRINTED FOR SUBPOENA 1291269
07/16/2019	07/16/2019 N/A	CS	CALLING WITNESS WITNESS VOUCHER PRINTED FOR SUBPOENA 1291269
07/16/2019	07/16/2019 N/A	SB	CALLING WITNESS WITNESS VOUCHER PRINTED FOR SUBPOENA 1291268
07/02/2019	07/02/2019 N/A	SB	STATE SUBPOENA ISSUED (1291269)
07/02/2019	07/02/2019 N/A	SB	STATE SUBPOENA ISSUED (1291268)
07/02/2019	07/02/2019 N/A	SB	SHERIFF SERVICE FEE FOR SUBPOENA NUMBER 1288469, IN THE AMOUNT OF \$8.50.

06/20/2019	SB	06/20/2019 N/A	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 1286566, IN THE AMOUNT OF \$8.50.
06/20/2019	SB	06/20/2019 N/A	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 1286564, IN THE AMOUNT OF \$8.50.
06/20/2019	SB	06/20/2019 N/A	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 1286563, IN THE AMOUNT OF \$8.50.
06/19/2019	JE	06/25/2019 N/A	THE STATES MOTION FOR CONTINUANCE OF HEARING FILED ON 06/19/2019 IS GRANTED WITHOUT OBJECTION. HEARING PREVIOUSLY SET FOR 06/19/2019 AT 12:30PM IS RESET FOR 07/16/2019 AT 12:30PM. 06/19/2019 CPRMD 06/24/2019 16:03:51
06/19/2019	NT	06/19/2019 P1	STATES SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY UNDER RULE 16, FILED.





06/19/2019	06/19/2019 P1	MO	MOTION FOR CONTINUANCE, FILED. 05/26/2020 - UNKNOWN	06/18/2019	06/18/2019 N/A	SB	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 1288309, IN THE AMOUNT OF \$15.50.	06/17/2019	06/17/2019 N/A	SB	STATE SUBPOENA ISSUED (1288469) DEFENSE SUBPOENA ISSUED (1288309)	06/11/2019	06/12/2019 N/A	JE	PRETRIAL HELD 06/11/2019. MOTION TO SUPPRESS HEARING SET FOR 06/19/2019 AT 12:30 PM. AT THE REQUEST OF DEFENDANT. 06/11/2019 CPRMD 06/11/2019 15:38:41	06/11/2019	06/11/2019 N/A	SB	STATE SUBPOENA ISSUED (1287438) SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 1287438, IN THE AMOUNT OF \$8.50.	06/11/2019	06/11/2019 N/A	CS	CALLING WITNESS WITNESS VOUCHER PRINTED FOR SUBPOENA 1287438	06/11/2019	06/11/2019 N/A	SB	NT	STATES SUPPLEMENTAL	06/07/2019	06/07/2019 P1	NT	STATES SUPPLEMENTAL
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RESPONSE TO REQUEST FOR DISCOVERY UNDER RULE 16, FILED. MOTION FILED BY P1 THE STATE OF OHIO STATES RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS 05/26/2020 - UNKNOWN	MO	06/07/2019 P1	06/07/2019
STATE SUBPOENA ISSUED (1286566)	SB	06/05/2019 N/A	06/05/2019
STATE SUBPOENA ISSUED (1286564)	SB	06/05/2019 N/A	06/05/2019
STATE SUBPOENA ISSUED (1286563)	SB	06/05/2019 N/A	06/05/2019
PRETRIAL HELD 06/04/2019.	JE	06/07/2019 N/A	06/04/2019
PRETRIAL PREVIOUSLY SET FOR 06/04/2019 AT 09:00AM IS RESET FOR 06/11/2019 AT 09:00AM. AT THE REQUEST OF DEFENDANT. 06/04/2019 CPRMD 06/06/2019 16:12:00	JE	05/22/2019 N/A	05/21/2019
PRETRIAL PREVIOUSLY SET FOR 05/21/2019 AT 09:00AM IS RESET FOR 06/04/2019 AT 09:00AM. AT THE REQUEST OF			



05/16/2019	05/16/2019 D1	MO	DEFENDANT. 05/21/2019 CPRMD 05/22/2019 09:06:14 MOTION TO SUPPRESS, FILED. MOTION TO SUPPRESS 05/26/2020 - UNKNOWN PRETRIAL HELD 05/08/2019.	05/08/2019	05/15/2019 N/A	JE	PRETRIAL PREVIOUSLY SET FOR 05/08/2019 AT 09:00AM IS RESET FOR 05/21/2019 AT 09:00AM. AT THE REQUEST OF DEFENDANT. 05/08/2019 CPRXB 05/08/2019 11:57:03 MOTION FILED BY D1 WILLIAM W ELLIS MOTION FOR EXTENSION OF TIME 05/26/2020 - UNKNOWN	04/25/2019	04/29/2019 N/A	JE	PRETRIAL HELD 04/25/2019. PRETRIAL PREVIOUSLY SET FOR 04/25/2019 AT 09:00AM IS RESET FOR 05/08/2019 AT 09:00AM. AT THE REQUEST OF DEFENDANT. 04/25/2019 CPRMD 04/25/2019 14:44:21
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04/09/2019	04/10/2019 N/A	JE	PRETRIAL HELD 04/09/2019. PRETRIAL PREVIOUSLY SET FOR 04/09/2019 AT 09:00AM IS RESET FOR 04/25/2019 AT 09:00AM. AT THE REQUEST OF DEFENDANT. 04/09/2019 CPRMD 04/10/2019 09:12:24
04/04/2019	04/05/2019 N/A	JE	PRETRIAL HELD 04/04/2019. PRETRIAL PREVIOUSLY SET FOR 04/04/2019 AT 09:00AM IS RESET FOR 04/09/2019 AT 09:00AM. AT THE REQUEST OF DEFENDANT. 04/04/2019 CPRMD 04/04/2019 14:57:32
04/03/2019	04/03/2019 P1	NT	STATE'S DEMAND FOR DISCOVERY, FILED.
04/03/2019	04/03/2019 P1	NT	STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR DISCOVERY AND BILL OF PARTICULARS UNDER RULE 16, FILED.
03/28/2019	03/28/2019 D1	MO	MOTION FILED BY D1 WILLIAM W ELLIS REQUEST FOR EVIDENCE NOTICE

03/28/2019	03/28/2019 D1	MO	MOTION FILED BY D1 WILLIAM W ELLIS MOTION FOR PRODUCTION 05/26/2020 - UNKNOWN	
03/28/2019	03/28/2019 D1	MO	MOTION FOR DISCOVERY, FILED MOTION FOR DISCOVERY 05/26/2020 - UNKNOWN	
03/28/2019	03/28/2019 D1	MO	MOTION FOR BILL OF PARTICULARS, FILED. MOTION FOR BILL OF PARTICULARS 05/26/2020 - UNKNOWN	
03/28/2019	03/28/2019 N/A	BN	\$2,500.00 PERSONAL BOND POSTED ON 03/28/2019 BY DEFENDANT. BOND NO. 726665	
03/28/2019	03/28/2019 N/A	CS	PRISONER IN COURT	
03/28/2019	03/28/2019 N/A	JE	DEFENDANT PRESENT WITH COUNSEL. DEFENDANT RETAINED RUSSO, CHRISTINE A. AS COUNSEL. READING OF INDICTMENT WAIVED. TWENTY-FOUR HOUR	

SERVICE WAIVED.
 DEFENDANT PLEAD
 NOT GUILTY TO
 INDICTMENT. BOND
 SET AT 2,500.00
 DOLLARS. BOND
 TYPE: PERSONAL.
 JUDGE TURNER,
 DEBORAH M (375)
 ASSIGNED
 (MANUALLY). FIRST
 PRETRIAL SET FOR
 04/04/2019 AT 09:00
 AM IN COURT
 ROOM JC20D
 JUDGE DEBORAH
 M. TURNER.
 CASE CONTINUED
 TO 03/28/2019 AT
 REQUEST OF
 DEFENDANT.
 FEDEX RECEIPT
 NO. 38062675
 DELIVERED BY
 FEDEX 03/19/2019
 ELLIS/WILLIAM/W
 PROCESSED BY
 COC 03/20/2019.
 ARRAIGNMENT
 SCHEDULED FOR
 03/27/2019.
 CS
 WRT FEE
 SUMMONS -
 CRIMINAL(38062675)
 SENT BY FEDERAL
 EXPRESS. TO:
 ELLIS/WILLIAM/W
 500 KARL DR.
 CLEVELAND, OH
 441430000

03/13/2019

03/13/2019 N/A

CS

03/13/2019

03/14/2019 N/A

GP

03/20/2019


03/20/2019 N/A

SR

03/27/2019

03/27/2019 N/A

JE



03/13/2019	03/13/2019 N/A	CR	INDICTED ORIGINAL ON 03/13/2019
03/13/2019	03/14/2019 N/A	SF	LEGAL RESEARCH
03/13/2019	03/14/2019 N/A	SF	COURT SPECIAL
03/13/2019	03/14/2019 N/A	SF	PROJECTS FUND
03/13/2019	03/14/2019 N/A	SF	CRIME STOPPERS
03/13/2019	03/14/2019 N/A	SF	COMPUTER FEE
03/13/2019	03/14/2019 N/A	SF	CLERK FEE
03/06/2019	03/06/2019 N/A	CR	CASE INFORMATION ENTERED
03/04/2019	03/06/2019 N/A	CR	DATE OF OFFENSE 03/04/2019
03/04/2019	03/06/2019 N/A	CR	ARRESTED 03/04/2019

Only the official court records available from the Cuyahoga County Clerk of Courts, available in person, should be relied upon as accurate and current.
 Website Questions or Comments.
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C OF C 71-1

POLICE DEPARTMENT

CLEVELAND, OHIO

DEPARTMENTAL INFORMATION

DIST. 5 ZONE

Max 20, 2020

EXAMINED BY _____ RANK _____

2020

FROM Det. Jeffrey A. Yasenchack #2362

TO Lt. Charles DePenti 8499

SUBJECT Drug Trafficking Investigation into William Ellis 2020-139102

COPIES TO Unit files, Personnel files

In mid April 2020 I received information from a concerned citizen about a black male residing at 638 East 127 St. selling drugs out of his house. A lot of white people arriving at the house, staying a short time and then leaving. This male has been driving a black SUV. In early May 2020 a confidential informant (CI-1) provided me with information about a black male known as "Lays," described as tall, over six feet, 240 lbs., bald or shaved head, approximately 35-40 years old, drives a black Ford Explorer with Ohio plate HYH8894, and lives at 638 East 127 St. Using Google maps I brought up this area and CI pointed out the house. CI stated he sells heroin and crack cocaine and instructed me to watch the house and observe the volume of white people arriving to buy drugs. I ran the plate HYH8894 through the OHLEG database and learned the owner was a known male, William Ellis, dob 9-18-1978, SS#***-**-6706. The CI when shown a BMV photo of Ellis positively identified him as the male CI knew as "Lays." I arrested Ellis in 2019 having in his possession heroin, carfentanil, cocaine, and marijuana during a traffic stop. This case is open and currently in appeals court.

On May 11, 2020 I set up surveillance on 638 East 127 St. The black Ford Explorer was parked on the street in front of the house. After a few minutes a burgundy Dodge Magnum parked on the street. Two white males exited and knocked on the front door. Ellis opened the door and held the security door open while the two white males entered the house. A blue Saturn parked on the street, a white female exited, and walked to the front door. She was let in just as a white vehicle pulled into the house's driveway. Two people from that vehicle entered the house. The first two males exited and drove off in the Magnum. The female exited, re-entered the Saturn, and drove off. The listed owner of the Saturn who matched the female I observed had convictions for drug possession. A couple minutes later the last two people exited the house and drove off. I stopped this last vehicle and recovered suspected fentanyl from the occupants.

The occupants became confidential informants (CIs) and supplied information about their dealer known as "Blaze." He was described as a black male, 6'4", 250 lbs., bald with a beard, about 40 years old. CIs positively identified their dealer when shown a BMV photo of Ellis. They had purchased heroin from Blaze over a dozen times, contacting him via phone#216-407-1016. I field tested a sample of the suspected fentanyl, which did test positive for the presence of fentanyl. The fentanyl was sealed into drug bag#589960 and has been submitted to the county lab for testing, lab#2020-2394-0001 revealed the drugs weighed 0.76grams and tested positive for a mixture of heroin, carfentanil, fentanyl, cocaine, 4-ANPP, tramadol, and gabapentin.

Ellis had numerous felony convictions including kidnapping, GSI, drug trafficking, felonious assault, failure to comply, and an open case for failure to comply. I drafted a search warrant and affidavit for the target house at 638 East 127 St. On May 12, 2020 Cleveland prosecutor Gina Villa reviewed it. On May 14, 2020 Honorable Judge Brian McCormack deemed probable cause existed and signed it.

On May 18, 2020 at 0628 hours members of the 5th district Vice unit, Det. Yasenchack 2362, Smith 1712, Kopchak 2139, McCully 1167, Sabolik 1021, Sumlin 2153, Oliver 808, Ptl. Hornblower 2477, K9 Officer Nichols 2454 with partner Hugo, Capt. Kane 6571 along with the Cleveland SWAT unit executed



the search warrant making entry via the front door after making several announcements. The target, William Ellis, was located upstairs during from the bedroom to the bathroom, and his girlfriend, Melissa Stalker, was located in the master bedroom. Both were advised of their constitutional rights. Swat advised us of a marijuana grow operation in the small upstairs room. Off. Nichols accessed the small operation including approximately 15 plants and variety of grow lights, fertilizers, soil, and grow containers. A search was conducted and the following drugs, guns, and property were seized:

1. Digital scale with residue bag#595034 located on kitchen table by 1167.
2. Bag with multiple bags of narcotics bag#595032 located in coat pocket in master bedroom by 2362.
3. Two grow lights located in grow room by 1712.
4. Drug press with residue bag#595030 located on top of kitchen cabinet by 2477.
5. Magazine loaded with 17 rounds located on living room table by 2139, 2362.
6. Two cellphones located on top of kitchen cabinet by 2477.
7. Two scales with residue bag#595028 located on kitchen counter by 2477.
8. Seven and a half pills bag#595104 located on upstairs bathroom floor by 1712.
9. Mail and paperwork located in master bedroom and livingroom by 2362.
10. Three cellphones located in master bedroom by 2362.
11. Bottle of pills bag#589194 located in master bedroom by 2362.
12. Seven containers with residue bag#93671 located in kitchen cabinet by 808.
13. Mentos container with 2 packets/straw bag#595124 located in northwest bedroom by 1021.
14. Pill in paper bag#589192 located in master bedroom purse by 2362.
15. Pills bag#595026 located on living room floor by 2362.
16. Bag with residue bag#595118 located in living room by 2139.
17. Cell phone located in northwest bedroom by 1021.
18. Cell phone located in Chevy Avalanche by 2477.
19. Recording device located in Chevy Avalanche by 1021.
20. \$775.00 cash located in master bedroom by 2362.
21. Gun swab of loaded magazine located from magazine in living room by 2139.
22. Gun swab of revolver located from Revolver in master bedroom by 2139.
23. Three cellphones located in living room by 2362.
24. Ring door camera located on front porch by 2362.
25. Cut agent bag#594968 located in living room by 1021.
26. Bag of baggies with residue bag#595024 located on stove by 2477.
27. Bag of 5.56 ammo located in living room closet by 2477.
28. Swan home security system located on house exterior by 2153, 2139.
29. 9mm ammo located in living room closet by 2477.
30. 7.62 ammo located in living room closet by 2477.
31. Smith & Wesson .38 special revolver S#1D65044 with 5 rounds located in master bedroom by 2362.
32. Marijuana plants (15) bag#595008 located in grow room by 1712.

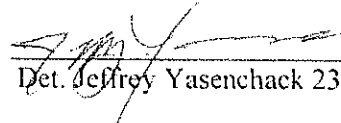
During the search Ellis was interviewed and stated that when SWAT made entry he tried to flush pills down the toilet. Several pills and two bags with residue were found in route to and inside bathroom. Ellis began complaining about a variety of health issues despite just being released from the hospital yesterday. EMS conveyed Ellis to the Cleveland Clinic hospital. He was treated and released, tested negative for covid, and conveyed to county jail. Stalker was interviewed and stated she had stayed the night there, doesn't live there, and was unaware that Ellis was selling drugs. She did state she saw a silver revolver with wood handles upstairs in the master bedroom alongside the bed. The electric meter was disconnected, but the wiring was re-connected providing the household free electricity. First Energy was notified. Above gun, drugs, and seized property entered into 5th district evidence. Drug and gun to be conveyed to the county lab for analysis.



William Ellis 638 East 127 St. Cleveland, Oh 44108, ~~DOB: 11/18/1978~~ 6'5", 250, bald, Bro.
Charges to be indicted: drug trafficking, drug possession, drug manufacturing, cultivating marijuana,
HWWUD, theft of public utilities, PCT.

This incident occurred within 1000ft. of EBC Daycare & Preschool Center at 12205 St Clair Ave. and
Citizens Academy Elementary School at 12523 Woodside Ave.

Respectfully,


Det. Jeffrey Yasenchack 2362

~~Court of Appeals Opinion~~

[Cite as *State v. Woods*, 2012-Ohio-5509.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 98054

STATE OF OHIO

PLAINTIFF-APPELLANT

VS.

CLYDE WOODS JR.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Common Pleas Court
Case No. CR-556141

BEFORE: S. Gallagher, J., Sweeney, P.J., and Rocco, J.

RELEASED AND JOURNALIZED: November 29, 2012

Exhibit 35



ATTORNEYS FOR APPELLANT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Maxwell M. Martin
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113

ATTORNEY FOR APPELLEE

Aaron T. Baker
Aaron T. Baker Co., L.P.A.
38109 Euclid Avenue
Willoughby, OH 44094

PS.1

SEAN C. GALLAGHER, J.:

{¶1} Plaintiff-appellant, the state of Ohio, appeals from the trial court's decision to grant the motion to suppress of defendant-appellee, Clyde Woods, Jr. For the reasons set forth below, we affirm the ruling.

{¶2} On October 31, 2011, Cleveland patrol officers Donald Kopchak and Jeffrey Yasenchak worked the second shift. Because it was Halloween evening, the officers focused on children's safety in the area of East 105th Street. As they headed west on Adams Avenue, the officers were behind a black Lincoln MKZ that just turned onto Adams from East 105th Street. The speed limit on Adams is 25 m.p.h. The officers' speed was 35 m.p.h. They "paced" the Lincoln for a "little over two blocks" and concluded that the driver was exceeding the 25 m.p.h. speed limit.

{¶3} Yasenchak activated the overhead light and sirens and stopped the Lincoln by the address of 9601 Adams. Yasenchak approached the driver's side, and Kopchak approached the passenger's side. The driver, Woods, was the only person in the Lincoln.

{¶4} Woods stepped out of the car at Yasenchak's request. While Yasenchak patted down Woods, "some sort of large object is moving down [Woods's] pant leg all the way down to his boots." Yasenchak pulled up the bottom of Woods's pant leg and found one bag of suspected marijuana. The officers handcuffed Woods and arrested him

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for using a motor vehicle to solicit drug sales, a violation of Cleveland Codified Ordinances 619.23. The officers then walked Woods back to the patrol car, advised him of his *Miranda* rights, and placed him in the back seat.

{¶5} Yasenchak testified at the motion to suppress hearing about why he patted down Woods after he asked him to step out of the Lincoln:

A. As soon as he rolled down the window, I just detected the scent of marijuana.

Q. And are you familiar with the scent of marijuana?

A. Yes.

Q. Burned and unburned?

A. Yes.

Q. And can you describe for the Court why you're familiar with that scent?

A. I made a lot of arrests. I was in the narcotics unit for two and a half years [out of 14 with the department] * * *. Just numerous arrests, and personal experience with marijuana.

Q. Are you trained to identify that scent?

A. Yes.

Q. Are you qualified to identify that scent?

A. Yes. I've attended seminars from ATF, FBI, DEA all pertaining to drug investigations.

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{¶6} After Woods's arrest, Kopchak proceeded to inventory the Lincoln's contents in preparation of towing the car. He testified at the motion to suppress hearing about the inventory search:

A. [I]n the trunk was an Ohio State bag, bookbag, backpack, I believe, and inside that backpack was [sic] two large bags of marijuana.

Q. Okay. Now, backing up, had you — obviously, by the time that you're doing an inventory search of the car, you have located some marijuana on the person of Mr. Woods, correct?

A. Correct.

Q. Any other marijuana found in the passenger compartment of the car?

A. No, I don't believe so.

Q. Okay. Were you — did you detect the presence of any other marijuana?

A. When I was in the back seat, making sure there was no valuables in the back seat, the smell of unburned or fresh marijuana was still very strong in the vehicle.

Q. Okay. All right. So then you continue the inventory search and find the backpack, correct?

A. Correct.

Q. And did you have to open the backpack, it was already open, or what?

A. It was already open.

{¶7} Kopchak next testified about his training relevant to the feel and smell of different drugs, including burnt and unburnt marijuana. He followed up with testimony that he made "probably too many to count" marijuana arrests during his five years on the police force. The marijuana found in the trunk of Woods's Lincoln was unburnt

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marijuana with a "strong odor," even in the three plastic bags inside each other making up State's Exhibit No. 3. The marijuana was in two individual large plastic freezer bags when found by Kopchak.

{¶8} Kopchak also testified about his training on the Cleveland Police Department's tow policy. He stated that he read the tow policy a few years ago and he receives updates during roll call. According to him, he was accurate, thorough, and acted in a manner consistent with the policy when he inventoried Woods's vehicle. In the tow supplement, Kopchak did not list anything of value recovered from the trunk or the passenger compartment. He also lifted the hood of the Lincoln as part of the inventory search, "[j]ust to make sure everything's there that's supposed to be there."

{¶9} During cross-examination, Kopchak admitted to issuing a citation for weaving to Woods ten days earlier, on or about October 21, 2011. Woods was briefly in police custody that day. When questioned as to why he was in custody, Kopchak responded, "[b]ecause he got out of his vehicle, exited his vehicle, and continued ignoring all my verbal commands to stop."

{¶10} On November 8, 2011, Woods was charged with drug trafficking in violation of R.C. 2925.03(A)(2), with forfeiture and schoolyard specifications; possessing criminal tools in violation of R.C. 2923.24(A), with forfeiture specifications; and drug possession in violation of R.C. 2925.11(A), with forfeiture specifications.

{¶11} On January 1, 2012, Woods filed a motion to suppress stop, arrest, and search. He asserted that the traffic stop and pat down were improper because he was not

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driving in violation of the posted speed limit. His arrest was improper as well because the officers had no evidence or any indication that he was soliciting drug sales from his vehicle. Finally, the search of the vehicle was not a proper inventory search. Woods requested that the trial court, therefore, suppress all evidence obtained by the officers.

{¶12} The trial court held a motion to suppress hearing on January 26, 2012. The trial court granted the motion and suppressed as evidence all of the marijuana discovered on Woods's person and in the trunk of his vehicle. In its opinion dated March 1, 2012, the court stated:

Since radar was not used by these officers to detect the speed of Defendant's vehicle, and because of the short distance traveled by Defendant's vehicle following his turn off East 105th Street, and because neither officer testified that they had specified training in detecting speed of another vehicle unaided by technology, it is unlikely that stopping Defendant's vehicle for traveling at 35 miles per hour in a 25-mile per hour zone is justified within the meanings articulated by *State v. Johnson* (1986) 34 Ohio App.3d 94 or *Brown v. Texas* (1979) 443 U.S. 47.

Testimony of the officers that the search was an inventory search of the vehicle was tantamount to a tow is disingenuous and merely a pretext for the claimed inventory. First of all, the stop, handcuffing and pat down were illegal since probable cause was absent. Secondly, the search of the trunk and most [s]uspiciously, the hood, along with the officer's failure to list all of the vehicle's contents on the inventory list suggests that the search of the vehicle was neither incidental to a tow nor for the purposes of inventory.

{¶13} The state timely appealed and challenges in one assignment of error, the trial court's ruling on the motion to suppress. The state argues that the police officers properly stopped Woods based on pacing his vehicle under the authority of *Richmond Hts. v. Myles*, 8th Dist. No. 86171, 2006-Ohio-542. It also argues that a police officer

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may properly order a motorist out of a vehicle when stopped for a traffic citation, even without suspicion of criminal activity, under the authority of *State v. Evans*, 67 Ohio St.3d 405, 1993-Ohio-186, 618 N.E.2d 162. According to the state, the smell of marijuana justified the pat down, the discovery of marijuana on Woods's person justified his arrest, and his arrest and detention justified the inventory search. For the following reasons, we reject the state's arguments.

{¶14} Appellate review of a suppression ruling involves mixed questions of law and fact. *See State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71. When ruling on a motion to suppress, the trial court serves as the trier of fact and is the primary judge of the credibility of the witnesses and the weight of the evidence. *See State v. Mills*, 62 Ohio St.3d 357, 582 N.E.2d 972 (1992); *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982). An appellate court must accept the trial court's findings of fact as true if they are supported by competent and credible evidence. *Burnside* at ¶ 8. The appellate court must then determine, without any deference to the trial court, whether the facts satisfy the applicable legal standard. *Id.*

{¶15} When determining whether an investigative stop is supported by a reasonable, articulable suspicion of criminal activity, the stop must be viewed in light of the totality of circumstances surrounding the stop. *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph one of the syllabus. An officer's inchoate hunch or suspicion will not justify an investigatory stop. For example, "[t]he reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately

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rely in determining whether an investigative stop is warranted.” *Bobo* at 179. However, that fact alone is insufficient. The totality of the facts and circumstances before the officer must reasonably suggest that some specific criminal activity is afoot. *Id.* Courts must give “due weight to the officer’s trained eye and experience” in reviewing the totality of the circumstances. *State v. Andrews*, 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271 (1991).

{¶16} Some appellate courts in Ohio, including ours, have held that an officer’s visual estimation of a vehicle’s speed alone is insufficient to support a conviction for speeding. *See, e.g., Middleburg Hts. v. Campbell*, 8th Dist. No. 87593, 2006-Ohio-6582, abrogated by *Barberton v. Jenney*, 126 Ohio St.3d 5, 9, 2010-Ohio-2420, 929 N.E.2d 1047. Prior to the Ohio Supreme Court’s decision in *Jenney*, this court has recognized pacing as a legitimate means of determining speed. In *Middleburg Hts. v. Quinones*, 8th Dist. No. 88242, 2007-Ohio-3643, we stated:

[A]n arresting officer’s visual estimates of speed alone are insufficient to convict persons of speeding beyond a reasonable doubt. *See Cleveland v. Wilson*, 8th Dist. No. 87047, 2006-Ohio-1947, at ¶ 7. However, as Quinones himself points out, that was not the only evidence presented. Officer Bulka testified that he paced Quinones’ vehicle to determine his speed. Many Ohio courts, including this district, have found that pacing a car is an acceptable manner for determining speed. *State v. Horn*, 7th Dist. No. 04BE31, 2005-Ohio-2930, at ¶ 18; *Middleburg Heights v. Campbell*, 8th Dist. No. 87593, 2006-Ohio-6582, at ¶ 17.

{¶17} The above recognition of pacing is based on a police officer’s visual perception that a vehicle is speeding, in combination with years of experience. Visual perception and years of experience constitute “specific and articulable facts which

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provide the police officer with reasonable grounds to make an investigatory stop[.]”
State v. Porter, 11th Dist. No. 99-P-0061, 2000 Ohio App. LEXIS 4211, *10 (Sept. 15, 2000), quoting *State v. Lawless*, 11th Dist. No. 98-P-0048, 1999 Ohio App. LEXIS 2941 (June 25, 1999). See *State v. Hammen*, 5th Dist. No. 2012CA00009, 2012-Ohio-3628. The Seventh District relied on this language in recognizing pacing in *Horn*, and we, in *Quinones*, relied on *Horn* in recognizing pacing as a legitimate way of determining speed.

{¶18} The Ohio Supreme Court, however, in *Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047, found that visual perception and general experience as a police officer is sufficient evidence to support an officer’s unaided visual estimation of speed under certain circumstances. The court held:

A police officer’s unaided visual estimation of a vehicle’s speed is sufficient evidence to support a conviction for speeding in violation of R.C. 4511.21(D) without independent verification of the vehicle’s speed if the officer is trained, is certified by the Ohio Peace Officer Training Academy or a similar organization that develops and implements training programs to meet the needs of law-enforcement professionals and the communities they serve, and is experienced in visually estimating vehicle speed.

Id. at syllabus.

{¶19} In *Jenney*, the Supreme Court concluded that a police officer’s visual estimation of the defendant’s speed was sufficient to support a conviction under R.C. 4511.21(D) because there was testimony offered at trial as to the officer’s training, certification, and experience in visually estimating vehicle speeds. *Id.* at ¶ 2. Specifically, the officer testified that he was trained to visually estimate vehicle speed, was certified by a law enforcement training organization in visual estimations, and

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performed hundreds of visual speed estimations as a police officer. *Id.* at ¶ 21. The officer further testified that based on his training and experience, he estimated that the defendant's vehicle was traveling 70 m.p.h. in a 60 m.p.h. zone at the time of the traffic stop. *Id.* at ¶ 21-22.

{¶20} Accordingly, visual estimation of a vehicle's speed is sufficient evidence depending on the *type of training* provided to the police officer *and* the officer's *certification and experience in visually estimating vehicle speed*. In other words, visual estimation and the officer's general years of experience, without the training, certification, and actual experience in visually estimating vehicle speed, is insufficient evidence of a vehicle's speed.

{¶21} In this case, the totality of the officers' testimony was that Woods was exceeding the posted speed limit of 25 m.p.h. Yasenchak and Kopchak both testified about drug detection training and their respective years of service with the police department. Kopchak also testified about tow policy training. Neither officer testified, however, as to his training, certification, and experience in visually estimating vehicle speed. As a result, we find Yasenchak's and Kopchak's testimony as to their visual observation of Woods's speed insufficient under *Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047. *See also State v. Starks*, 196 Ohio App.3d 589, 2011-Ohio-2344, 964 N.E.2d 1058 (12th Dist.); *State v. Riddle*, 6th Dist. No. OT-10-040, 2011-Ohio-1547.

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{¶22} The state argues that even if the officers' testimony did not satisfy the *Jenney* standard, the testimony about pacing Woods's vehicle alone warranted a traffic stop for speeding. The trial court considered and rejected this argument, finding the officers did not have sufficient time or distance to reasonably use pacing as a means to determine the speed of Woods's vehicle.

{¶23} Woods turned onto Adams from East 105th. This necessitated time and distance for the officers' vehicle to first catch up to Woods's vehicle and then commence pacing. The officers only followed Woods for two residential city blocks, too short a distance to establish a speeding violation based on pacing. The court was in the best position to evaluate the credibility of the officers' testimony on this point, and we decline to substitute our judgment for that of the trial court. *See Mills*, 62 Ohio St.3d 357, 582 N.E.2d 972; *Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583. The trial court's findings are, therefore, supported by competent and credible evidence, and the totality of the facts and circumstances before the officers does not otherwise suggest criminal activity. *Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489.

{¶24} Under these circumstances, the trial court correctly concluded that the officers lacked probable cause to stop Woods for speeding. The ensuing searches of his person and vehicle were illegal, and thus the trial court properly suppressed the evidence discovered in those searches.

{¶25} Even if we found that the officers validly stopped Woods for speeding, the trial court serves as the trier of fact and is the primary judge of the credibility of the

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witnesses. *Mills*, 62 Ohio St.3d 357, 582 N.E.2d 972; *Fanning*, 1 Ohio St.3d 19, 437

N.E.2d 583. We would defer to and agree with the trial court's findings and conclusions relating to the testimony of Yasenchak and Kopchak: the "[t]estimony of the officers that the search was an inventory search of the vehicle was tantamount to a tow is disingenuous and merely a pretext for the claimed inventory," and "the search of the trunk and most [s]uspiciously, the hood, along with the officer's failure to list all of the vehicle's contents on the inventory list suggests that the search of the vehicle was neither incidental to a tow nor for the purposes of inventory." *This is a classic example of a police officer's intentional use of an unlawful traffic stop, under a questionable codified ordinance, for the sole purpose of conducting a fishing expedition for evidence of another crime, and a tailored script at the motion to suppress hearing to justify the stop and subsequent searches. † *See State v. Bevan*, 80 Ohio App.3d 126, 608 N.E.2d 1099 (11th Dist. 1992).

{¶26} The state's assignment of error is accordingly overruled.

{¶27} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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SEAN C. GALLAGHER, JUDGE

JAMES J. SWEENEY, P.J., and
KENNETH A. ROCCO, J., CONCUR